

The American Political Science Review

Vol. XXII

NOVEMBER, 1928

No. 4

THE MENTORS OF MUSSOLINI

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Attentive observers of conditions in Italy are well aware that Fascism is an exceedingly complicated phenomenon; that what seems to be simply a dictatorship of the upper classes in reality presents many surprising and apparently contradictory features. Fascism, indeed, has been likened to a great river into which numerous tributaries have poured their waters. Among these tributaries are such movements as Nationalism, Futurism, and Syndicalism. Besides, Fascism is more than a practical experiment in government. It has developed a theory and a philosophy, and, one may even add, an art, a mysticism, and a religion. "Fascism," declares Mussolini, "has a doctrine, or, if you will, a philosophy with regard to all the questions which beset the human mind today." And again he remarks, "We play upon every chord of the lyre, from violence to religion, from art to politics."

The stages in the outward history of Fascism need only be mentioned. The movement had humble and, its enemies say, even sordid beginnings. The first Fascio di Combattimento was formed in March, 1919, by Mussolini and other derelicts of the war. This organization, swollen by all sorts of unexpected accretions, was transformed into the National Fascist party in November, 1921. In October, 1922, occurred the sensational march on Rome, which placed the party exultantly, but none too securely, in the seat of power. The murder of Matteotti in May, 1924, precipitated a dangerous crisis in which Fascism appeared to be momentarily on the defensive, but from which it triumph-

antly emerged as complete master of the situation. Since then it has effectually quelled all opposition and has proceeded to the realization of its constructive program, of which the great Labor Charter of April, 1927, is thus far the most impressive item.

But the inner story of Fascism is a wholly different thing. What was proletarian is now bourgeois. What began as radical has ended as conservative. Sedition has changed into loyalty. Left has turned right. The only constant quantity, the sole *continuum*, in this bewildering reversal has been Mussolini himself. It is not unnatural that Mussolini has been accused by his adversaries of being the arch-turncoat of history, outdoing all other famous renegades in the vast and devastating effect of his treachery to the cause of popular liberty. And, in plain fact, there is no denying that Mussolini was at one time a socialist, a republican, an atheist, a subverter of the government, and that he is now the opposite of all these things. He who was once against all constituted authority has become Authority incarnate. Even his partial pacifism and tepid feminism have vanished. Surely no other such complete volte-face is on record. His enemies say that the simple explanation is time-serving ambition. His supporters and those who are dazzled by the bold glamour of his name aver that it is the genius of creative statesmanship, which has not only divined but has actually directed the course of events. At this short range and with our insufficient data, it is impossible to pronounce upon either of these sweeping judgments. The unbiased historians of the future, if there be such, will have to decide the matter, and possibly even they may not be able to agree in their verdict.

But Mussolini has himself given us some indications of the influences which have contributed to his mental growth and to the formation of his outlook on life; and these indications have been rather unaccountably neglected by his biographers and by the controversial writers on Fascism. It seems only reasonable to suppose that an attempt to follow up these clues may be of some help in an understanding of the situation. That they will furnish anything like a full explanation, I do not for a moment

believe. In comparison with the marked and many-sided personality of Mussolini and with the surge and tumult of public events, mere ideas must seem pallid and nugatory. Besides, Mussolini, like Napoleon, has always professed to despise ideologies. Like nearly all statesmen, he is averse to abstract thinking. It is noteworthy, for example, that he has left the theoretical exposition of Fascism to others—to the philosopher Gentile, his former minister of education, and to Rocco, the minister of justice, whose formulation of principles, made in August, 1925, is regarded as the classic statement on the subject. But precisely one of Mussolini's salient characteristics is his quick and receptive intelligence. He has always had to exercise his wits as well as his will. He has been from early youth an eager reader and learner. No one has more readily assimilated ideas which he has felt to be vital to himself. Man and circumstance have indeed been the protagonists in this moving drama; but ideas have inevitably affected the theme.

Mussolini has made at least two statements about the thinkers who have most influenced him. In one of these he mentioned three foreigners, Nietzsche, William James, and Georges Sorel. In the other he added the name of his fellow-countryman, Machiavelli. To these four men I will join two others, Pareto and Oriani.

I

Since he became dictator, Mussolini has paid unstinted homage to Machiavelli as "the prophet of the pragmatic era in politics." He has read and re-read him and has undertaken a doctor's dissertation on him for the University of Bologna. He has called Machiavelli's *Prince* "the statesman's supreme guide." And he adds with exemplary frankness, "I want to preserve a direct contact between Machiavelli's doctrine and my life, between his and my thoughts on men and affairs, between his and my practice of government." In the world outside of Italy, Machiavelli's name has come, rightly or wrongly, to connote immoralism. Nothing succeeds like success, the end justifies the means, reasons of state override all ethical scruples—such seems to be

his plain drift. But in Italy his memory is revered as that of a great patriot who longed above all things for the independence and unification of his country. It was from this point of view that Cavour paid him tributes of respect and that Victor Emmanuel II was minded to refer to the "noble ideal underlying and permeating all his work."

To be sure, if *The Prince* is subjected to the ultimate ethical test, that is, if it is examined from the viewpoint of collective humanity throughout the ages, it has wrought mischief enough. It has encouraged Realpolitik, Machtpolitik, and the practice of international force and fraud. It has also produced what has been aptly called "the illusion of the proximate," and has fostered all sorts of minor political intrigues of the moment. Proudhon once declared that all Italians were Machiavellian at heart—an unwarranted exaggeration, as one realizes in thinking of Mazzini. But unquestionably the Machiavellian tradition has always been kept alive in Italy. The *sacro egoismo* proclaimed so openly by Salandra and Orlando on Italy's entrance into the World War in 1915 is the modern equivalent of Machiavelli's *frodi onorevoli* and *sceleratezze gloriose*. The only crime is a blunder.

Although some of Machiavelli's maxims may shock us in their naked formulation, there is a certain redeeming candor about them which is very refreshing to one who has listened long to the unctuous rectitude of so many public men. Mussolini is similarly frank. He has never pretended to be anything but a *realizzatore*, a pursuer of practical aims. He has an instinctive distrust of anyone who ascribes disinterested motives to himself. He does not mouth noble words. He has no sympathy with humanitarian idealism of the Woodrow Wilson model. And he assuredly is no internationalist—not even a "good European," whatever else he may have learned from Nietzsche. His purview and concern is Italy. Nor would he delude himself about the human material with which he has to work. He has none of that confidence in human nature which democratic idealists have manifested, so inspiringly or so pathetically as the case may be, since the days of Rousseau and Jefferson. He fully en-

dorses Machiavelli's opinion that men are false, selfish, ungrateful, and cowardly. "A sad lot," Machiavelli called them, "more interested in material gain than in their own honor, ready to change their attachments and affections with every veering wind." Mussolini's gloss on these words is that his own judgment would be even harsher. It is upon this solid foundation of distrust of men that Mussolini would build. "I affirm," he says, "that the doctrine of Machiavelli is more living today than it was four centuries ago."

There is some evidence that Mussolini has conceived his task to be the complete fulfillment of Machiavelli's aspiration. The latter wished to see Italy united and sufficiently strong to repel the foreign invader. Unification came in 1860, but before the birth of Fascism the moral unity of the Italian people had been broken, first by the feud between the civil government and the Vatican, and, more alarmingly, by the anti-nationalistic communist movement following the World War. The old animosity between church and state had largely abated, but the class war which came to a head in 1919 threatened the utter disruption of the nation. It is a disputed question whether the march on Rome in October, 1922, saved Italy from Bolshevism, as the Fascists allege, or whether the worst danger was not already past, as their opponents assert. But in any case the attitude of Mussolini is clear: no class war is to be tolerated in the new Corporative State which Fascist doctrine has devised. Here again Mussolini may appeal to Machiavelli, who pointed out that, although every state naturally divides itself into oppressors and oppressed, a wise prince will make an effort to lessen class struggle. Nowhere else has Mussolini made a more complete repudiation of his earlier views than in this matter of the class conflict. A proletarian himself, brought up a socialist, a follower first of Marx and then of Sorel, for some time editor of *Avanti*, the chief socialist newspaper of Italy, Mussolini had class consciousness bred into his bones. It is significant that the first newspaper which he edited was called *La Lotta di Classe*. But patriotism, the nationalistic impulse, and the practical exi-

gencies of government have done their perfect work. Machiavelli has triumphed over Marx and Sorel.

For both Machiavelli and Mussolini, force must be the foundation of government and hence the *ultima ratio* of the prince. In an interesting article published in the spring of 1923, called "Forza e Consenso," which is a sort of apology for the Fascist revolution and a reply to its liberal-democratic critics, Mussolini writes: "How are you going to prevent discontent from spreading and becoming a danger to the state? You will prevent it by force, by the inexorable use of that force when necessary. Take away from a government any sort of force—I mean physical force, armed force—and leave it only with its immortal principles, and that government will be at the mercy of the first organized group that decides to make an end of it. Fascism, once for all, is getting rid of these anti-vital theories" (i.e., popular sovereignty, the consent of the governed, etc.). "To speak of the sovereign people is to utter a tragic jest." Machiavelli called for a native militia to take the place of mercenary troops. Mussolini has created a Fascist militia, first to seize power for himself and now to reinforce the regular army in the maintenance of that power. Machiavelli in his *Discorsi* makes the following assertion: "The principal foundation of all states, both ancient and modern, is good laws and the proper military force to support them." Nothing could more admirably summarize the theory and practice of Mussolini than this succinct statement. What constitutes good laws, and how they are to be executed, is a matter for subsequent consideration.

There is a marked similarity between the two men in their attitude toward organized religion. The Erastianism of mentor and pupil is complete. Machiavelli saw in the papacy, with its temporal power, the chief obstacle to a united Italy. Mussolini has reached a sort of *modus vivendi* with the Vatican. The latter, shorn of its temporal rule, has indeed not abated its theoretical claims, but it has ceased to urge them in a menacing fashion, and for some fifteen years it has allowed its faithful sons to exercise their full privileges as Italian citizens. As for personal religion, there seems to be small difference between Machiavelli,

the Renaissance pagan, and Mussolini, the twentieth-century pagan, though the latter has long since ceased his anti-Christian utterances and abandoned his anti-clerical posture. For him it suffices that Roman Catholicism is the traditional religion of the Italians and that Rome is the spiritual capital of 200,000,000 or more people. Both of these things are of inestimable advantage to the wise ruler, for whom, as has been remarked, all religions are useful. "Religion," he states, "is a formidable force which must be respected and defended." But the Church must be kept in its place.

Does not Mussolini in truth seem to embody almost miraculously those very qualities which Machiavelli postulated for his prince? A man of *virtù*, of proven courage, of indomitable will, and of steadfast purpose, as unwilling to spare himself as he is others; a man moreover with a passion for facts and with an almost uncanny intuition of the popular mind; sensing in advance the turn of events and thus able to forestall Fortune, whose fickleness was always such a troublesome problem for Machiavelli. Ardent and imperious by nature, he naturally prefers the rôle of the lion to that of the fox, recalling his master's precept that it is generally better to proceed boldly rather than cautiously, since Fortune, like a woman, favors the young and the daring. But he can also be prudent and wily on occasion, as if recalling Machiavelli's admonition that "those who take their stand on the lion alone simply do not understand their business." "Good strategy," remarks Mussolini, "is calculation and audacity." His shrewd sense of timing has induced in him some rather remarkable veerings of opinion, as witness his change from neutralist to interventionist in the autumn of 1914 and his still more sudden change from republican to monarchist on the eve of the march to Rome.

II

Mussolini appears to have become acquainted with the works of Nietzsche in 1909 while he was editing a paper in Trent. As Trent was Austrian territory at the time, it was only natural that his mind should turn to German writers, and in Nietzsche

he found a soul-mate. It may be conjectured that Nietzsche brought to him in some ways a confirmation of already familiar moods rather than a harvest of new ideas; at least it would seem like carrying coals to Newcastle to preach to that lusty, ambitious youth of twenty-five the "affirmation of life" and the "will to power." But the overturning of moral values, the iconoclasm and the brilliant phrases, quite evidently captivated Mussolini. One can detect Nietzschean echoes all through his writings and speeches. Like the great German, he is constantly adjuring his countrymen to be hard, to live dangerously, to adopt a tragic optimism as the mood befitting strong men. "Weakness," he says, "is a crime not only against one's self but against one's country." "I have chosen the words 'Live dangerously' as the slogan of my life." There is even a hint of Nietzsche's *amor fati* in an aphorism of Mussolini which I saw placarded in the streets of Rome in April, 1927: "La giovinezza sta nel accettare e nel violare il destino"—"It is the mark of youth to accept and to force fate."

Nietzsche called himself an "Immoralist der Tugend," investing the word *Tugend* with the masculine meaning of Machiavelli's *virtù*. This master morality Mussolini has made his own. In a speech delivered at Milan shortly before the *coup d'état* he proclaimed: "We cannot accept the Tolstoyan moral standard, the moral standard of slavery." And he has asserted of the Fascist soldier: "He has a moral code of his own. The usual moral code, which is prismatic, with many facets, with many meshes, is of no use to him. Honor is for him what it was for the knights of old, a law which strives for, though it never reaches, the apex of perfection. It must be outside, as it is always above, the written or formal code."

We may be permitted to infer that, of all Nietzsche's teachings, it was the doctrine of the Superman that appealed to the very core of Mussolini, to the most vital and precious part of his ego. "I shall make my own life my masterpiece," he once declared. His career does in truth seem as marvelous as a saga of romance. He has been likened to Alexander, Caesar, Richelieu, Cromwell, Frederick the Great, Napoleon, Cavour, Garibaldi, and Bis-

marck. The favorite comparison is with his fellow-countryman and fellow-*condottiere* Napoleon, whom he also resembles facially. But his own avowed model is Julius Caesar, the greatest, as he thinks, of all the sons of men. It is, of course, Caesar the statesman, the true founder of the Roman Empire, whom he would emulate, for it is impossible to believe that Mussolini harbors any military ambitions; his war service, valorous as it was, did not advance him beyond the rank of a corporal. His activity and accomplishment are prodigious and seem to border on the supernatural. He is Il Duce, the chief of the Fascist party, the commander of the Fascist militia, and the prime minister of Italy. He has, in addition, filled as many as six cabinet portfolios at a time. He is hedged with a divinity more than regal, by the side of which the titular monarch appears as the *roi fainéant* that he actually is. To find a parallel for such an apotheosis one must go back to Napoleon. If Mussolini goes farther, one would suppose that he must break through the bounds of humanity and become a constellation or a deity. "Behold," he seems to say to an awe-stricken world, "the Superman is among you."

Readers of Nietzsche will remember the frequency with which the word *Zucht*, "discipline," appears in his later writings. Discipline has become the favorite word of Mussolini since his accession to power. Discipline and duty are the virtues that he would inculcate, by precept and example, in the youth of Italy. "My program," he announces, "is work, discipline, unity; action, not talk, nor theory." It would be idle to deny that he is, in striking measure, accomplishing his end. The youth of the land is responding. "Men," says Mussolini, "are perhaps tired of liberty. They have had enough of it. . . . Other watchwords exercise a much greater fascination on the youth of today—order, hierarchy, discipline." Perhaps he has once more correctly gauged the spirit of the time. Certain it is that liberty, which is under a cloud all over the world at present, is almost totally eclipsed in Italy, where freedom of speech, of writing, and of assembly simply does not exist. Nietzsche critically examined the concept *Freiheit* and asked, Freedom from what? And for what? So, too, Mussolini refuses to think of civic liberty

as an end in itself, or even as a profitable means to happiness. He talks at times as though he believed it an invention of the ideology of the nineteenth century—"the stupid century," to employ Léon Daudet's famous phrase, which the Fascist press is so fond of quoting. "The people do not want liberty," says Mussolini. "They want railways, bridges, drains, houses, roads, water, and light. . . ." "If there is a man in Italy who is not free, I am that man. I accept this servitude as the highest reward I can have conferred upon me." "Liberalism," Mussolini further affirms, "is not the last word; it does not represent any final and decisive formula in the art of government. . . . Men have been governed, more or less fortunately, in a thousand different ways." Liberalism may have been relatively good as a temporary device last century, when the forces of modern capitalism and nationality were taking shape, but it is an anachronistic survival today. "Indeed the general defeat of Liberalism and the thorough discrediting of the conception of the Liberal State is the most striking of post-war phenomena." Such is the language of this successor of Cavour. And so, proclaims Mussolini to the world, in words which a disciple of John Stuart Mill will always find it difficult to forgive or forget: "Liberty is no longer a chaste, severe maiden, for whom generations in the first half of the last century fought and died. . . . Fascism is not afraid to declare itself illiberal or anti-liberal. It has already passed and, if necessary, will again pass, without the slightest hesitation, over the more or less decomposed body of the Goddess of Liberty." There is left in Italy what Don Sturzo, the exiled leader of the Popular party, calls "the sacred liberty of the Big Stick."

III

Mussolini's transition from Marxism to Syndicalism was made about the year 1910. The process was as painless as any gentle glide could possibly be. He was inclined to the socialism of direct action by his natural turbulence, by his disgust at the sloth and cowardice of certain of the old-line Socialist leaders, and lastly by the writings of Georges Sorel. This Syndicalist

phase was destined to last for ten years or more, and has left such a permanent impress on Mussolini's mind that an adequate appreciation of it is necessary to the understanding of Fascism as a whole. Indeed, a plausible case can be made out for the contention that without Sorel Fascism would never have come into existence; that is to say, the first *Fasci di Combattimento* were made up largely of groups of syndicalists, inspired by the writings of Sorel, whose influence was at all times greater in Italy than in his native France.

Sorel is one of the most tantalizing of modern political-thinkers. His personality and his ideas are so jarringly paradoxical that they seem either too good or too bad to be true, and one is tempted to say that half his attraction lies in his power to repulse. The contradictions of his personality might be passed over lightly—the fact that he, a professional man (an engineer by training), glorified the proletariat and aspersed the bourgeoisie; that this studious, ascetic recluse exalted action; and that, an intellectual to his finger-tips, he preached a relentless anti-intellectualism. But the anomalies of his thinking give us more serious pause. What are we to say about this combination of moral conservatism with the most revolutionary kind of socialism, about loving-kindness joined to violence, about this artificial naïveté—the self-conscious cultivation of the forces that spring from the unconscious? Sorel remains virtually unknown to the English-speaking world, despite the translation of his two most important works, *Réflexions sur la Violence* and *Les Illusions du Progrès*. But Mussolini, in my opinion, owes him a debt which is only equalled, if it is equalled at all, by the one due to Machiavelli.

Sorel accepted Marx's basic assumptions of the injustice of the present economic order and of the necessity of the class conflict. On the other hand, he rejected utterly, as a piece of effete ideology, the doctrine of the automatic working out of the social revolution. For him, socialism was above all a moral question. His imagination had been nourished by the study of primitive Christianity and of the lives of the Catholic saints, and by the reading of Corneille, Pascal, and Newman. He was

an intuitionist even before he became a fervent admirer of Bergson and a pragmatist long before he read William James. He had a Rousseau-like confidence in the virtues of the laborers, along with a consuming contempt for the materialistic, self-indulgent middle classes and the parasitic intellectuals. He wished to organize the workers in *syndicats*, or trade unions, which should be schools of character to train them for the heroic rôle which they were to be called upon to play. Life, he keeps assuring us, is irrational, the universe is tragic, the future is unpredictable. One thing alone we can rely upon, and that is our virile courage. Struggle and violence are the most efficacious agents in moral advance. For, though progress, as it is commonly conceived, is an illusion, history, like nature, does sometimes make leaps. The Latin aphorism, "*natura non facit saltum*," Sorel says, is an error of intellectualism. In the hope of forcing such a leap, the proletariat must be prepared to use violence, ranging all the way from sabotage to mass-strikes. Violence does not necessarily imply brutality, hatred, or barbarism; or at most these would be but unfortunate accidents. True violence is ennobling; it is the real revolutionary *élan* which is needed to give independence, initiative, and self-respect to the working-classes. By it countless sources of new energy will be released.

And what is violence to net the worker in the way of outward gain? Sorel would make no definite promises. Science, he repeated, has no way of foreseeing the future. But, the collective soul being essentially mystical, whenever great popular movements take place, myths are sure to arise. A myth is half-idea, half-image; it is the product of the imagination; but it may be a thousand times more active and efficient than so-called reality. The belief in myths has strengthened sects, nations, and whole races to acts of heroism and has given them the will to conquer. The myth of the speedy return of Jesus to earth organized primitive Christianity. The Marxian doctrine of the Social Revolution, which held Continental socialists together for so many years, was equally a myth. The new myth which Sorel taught the proletariat was the General Strike. The only

question applicable to the General Strike is: Does it grip the proletarian imagination with the force of a great myth? As Sorel puts it himself, "The myth must be judged as a means of acting on the present; any attempt to discuss how far it can be taken literally as future history is devoid of sense." The future, that is to say, must be left to the *élan vital*. But at least it is a gorgeous dream, this "catastrophic regeneration of society through the General Strike—a sublime fanaticism of violence to revitalize the sick soul of Europe."

Pareto once remarked: "Sorel has very well shown the capital importance of myth in the life of the people. It is the ideal which, manifesting itself under the form of a myth, excites, enraptures, and sustains them and renders them capable of great historical actions. The people that has no longer an ideal or a myth vegetates and tends to disappear." The importance lies not so much in the myth itself as in the sentiments it evokes. And Pareto indicated how patriotic myths might be a powerful dynamic, as in the case of modern Germany or modern Japan.

Mussolini, who is as fully persuaded as Napoleon or Disraeli that men live by imagination, has most assiduously cultivated the myth of a greater Italy which shall renew "the grandeur that was Rome." "Italy!", he exclaims, "that is the name, the great, the sacred name, in which all Fascists ought to find their true selves." And again he says: "Not the Italy of monuments and libraries, all most respectable things, but the Italy that I see born under my eyes, the Italy of today, overflowing with vitality, prepared to give herself a new lease of life, pregnant with serenity and beauty; an Italy which does not live like a parasite on the past, but is ready to build up her own future with her own forces and through her own works and martyrdom." "Fascists regard themselves as crusaders, whose ideal is summed up in two conceptions, God and their native land. They are called upon by a mystical duty to sacrifice themselves to the national cause." Italy, with the oldest civilization in Europe, but also with the youngest and lustiest blood, must be mistress of the Mediterranean and expand beyond its waters wherever colonies can be obtained. For Fascism is frankly imperialistic.

The Fascist newspapers (the only ones left in Italy) print panegyrics upon imperialism almost as often as they print denunciations of democracy. It is the mark of any vigorous, growing people, they keep saying, to reach out economically and spiritually, and hence also politically. Only the people of the United States of America are too naïve or too self-deceived to admit this, and so they prefer to call their own very real imperialism by the softer name of natural expansion, or manifest destiny, or even Monroe Doctrine.¹

In his last years Sorel bestowed his blessing upon Russian Bolshevism. He did not live to see the Fascist revolution, having died two months beforehand, in the late summer of 1922. Had he witnessed it, he would never have given it his benediction. For proletarian syndicalism was there defeated by the very weapons which it had itself devised. The engineer Sorel was hoist with his own petard. "The reply to Syndicalism," said Ramsay MacDonald, "is Fascismo."

Mussolini has adopted the structure and function of the *sindicato* as a constituent part of Fascism. Doubtless the example of Soviet Russia counted for much. The vital interests of the citizenry are to be represented and safeguarded in these

¹ This myth of Greater Italy has taken on a distinctly religious tinge, as myths always tend to do. Mussolini has referred to it as "the new religion," and has furnished Fascism lavishly with the rites, ceremonies, and visible symbols of a cult. The following creed, taught to the *Balilla*, or boy recruits to Fascism, speaks for itself:

"I believe in Rome Eternal, the Mother of my Fatherland,
And in Italy, her first born,
Who was born of her virgin womb by the Grace of God,
Who suffered under the barbarian invader, was crucified, slain and buried,
Who descended into the sepulcher and rose again from the dead in the Nineteenth Century,
Who ascended to Heaven in her glory in 1918 and 1922,
Who is seated at the right hand of Mother Rome,
Whence she will come to judge the quick and the dead.
I believe in the genius of Mussolini,
In our Holy Father Fascism and in the communion of its martyrs,
In the conversion of the Italians,
And in the resurrection of the Empire.
Amen!"

vocational unions; and in the aggregate of all the unions the Corporative State is to have its true being, much more than in the enfeebled parliament, which is now but a shadowy relic of the democratic régime. Mussolini has in these *sindicati* a powerful instrument for the realization of justice between classes, if he should see fit to use them for that end, as some people think he eventually will. Meanwhile, the persistent wooing of the laboring classes by Fascism presents one of the most entertaining spectacles in present-day Italy.

The Fascist conception of the state bears thus a striking resemblance to that of Soviet Russia. It is one huge union of producers in which everyone must perform his task. Article 2 of the Labor Charter reads: "Labor in all its forms, intellectual, technical, and manual, is a social duty. In this sense, and in this sense only, is it protected by the state." But what sharply differentiates Fascism from Bolshevism and keeps it in line with the other countries of western Europe is the retention of capitalism and of private enterprise. Only, as the motto runs: "Nothing outside of the state; all within the state; nothing against the state."

Through the influence of Sorel, Mussolini and the comrades of his Syndicalist days lost any lingering democratic prejudices that they may have had, and any hesitancy to use violence. As late as the autumn of 1920 they approved the forcible seizure of the factories by the laborers. One of the superficially disconcerting features of Fascist Italy is the open employment of terms which we ordinarily call "red." It requires a readjustment of one's conception to think of a "revolution" in favor of law and order, a "revolution of the Right." The shock is only slightly mitigated when the adjective "creative" is prefixed, as so often happens. *Viva la rivoluzione* is a permissible cry in Italy—provided, of course, it is understood that the Fascist revolution is meant.

So it is with "violence." There is no avoidance of the word and no disavowal of the thing. "Violence," says Mussolini, "is moral when it is sudden as a storm, surgical, chivalrous." And again he asserts: "We are violent whenever it is necessary to

be so. But I tell you right now that the necessary violence of Fascism must have a line and a style of its own which should be distinctly aristocratic, or, if you prefer it, strictly surgical." But Mussolini has been careful to denounce violence for its own sake, and more than once he has had occasion to curb the destructive passion of his unruly followers. The apology that is made for organized Fascist violence is simply that it has been a necessary defence, or, in some cases, a legitimate retaliation (for Fascism has its martyrs as well as its victims), and that in total amount it is vastly less than the violence of the bourgeois French Revolution or of the proletarian Russian Revolution.

The moral conservatism of Sorel, especially regarding sexual chastity, the integrity of marriage, and the value of the family as a nurse of virtues, seems to have roused some rather belated reverberations in Mussolini. After acknowledging that he brawled, fornicated, and caroused to excess in his earlier days, he has added with a sort of saturnine complacency: "With this broad experience of life, I consider that Destiny has appointed me to purify the morals of Italy." It should not be understood, however, that a reign of prohibition, Comstockery, or blue laws is contemplated. There is still plenty of personal liberty in Italy. It is rather that everyone must be busy and productive and that no undue dalliance is to be tolerated.

Sorel was convinced by his study of primitive Christianity that the proletariat, like the early followers of Jesus, should live its life apart, uncontaminated by any alliances. Only in that way could it hope to preserve solidarity and an unimpaired morale. Mussolini is of like mind when he says: "Fascism must be inflexible in its unaccommodating attitude toward other parties. Thus and thus only can the word become flesh and ideas be turned into deeds." Should Mussolini ever discover a lukewarm, compromising, or recalcitrant faction, we may be sure that, like another Cromwell, he would proceed to a Pride's Purge.²

² The following prophecy, uttered by Sorel in 1912, is all the more remarkable, since he always insisted that no one could tell what the future held in store. "Our Mussolini," he said, "is not an ordinary Socialist. Believe me, you will

IV

Vilfredo Pareto has already been mentioned in connection with Sorel, of whom he was a great admirer, though by no means a close follower. Pareto was only half-Italian by descent (his mother was French and he himself was born in Paris), but he was almost wholly Italian in his culture and is rightly regarded as one of the brightest ornaments of Italian scholarship. For thirty years before his death, in 1923, he was a professor in the University of Lausanne, where he established for himself a Continental reputation by his original contributions, first to economics and later to sociology. When the youthful Mussolini was a vagabond student in Switzerland, he attended Pareto's courses and conceived a great admiration for him, while Pareto in turn gave him private instruction and formed a high opinion of his pupil's ability.

Although Pareto's books are distinguished primarily by a solid scholarship, they are also illumined by some general ideas of a kind likely to kindle the interest of a restless mind. There is plainly discernible in them a growing hostility to liberalism and to political democracy and, what is its almost inevitable concomitant, a distrust of intellectualism. Pareto emphasized the importance for social philosophy of what Bismarck called "imponderables." To a socialist such as Mussolini then was, accustomed to reduce everything to the single economic motive, this was a strange and upsetting doctrine. He nowadays has no hesitation in saying: "I deny emphatically that the story of humanity can be explained in terms of economics." Pareto distinguished, in the technical jargon he employed, between the "residues," or the religious sentiments in the widest sense of the term, and the "derivatives," the rationalization of those sentiments. He believed that the residues chiefly determine the form of society and are susceptible of only the most gradual

one day see him at the head of a sacred battalion with his sword saluting the Italian flag. . . . Perhaps it is not yet known, but he is the only energetic man capable of repairing the government's weakness." See article by M. Jean Variot in the *Paris Éclair*, Sept. 11, 1922.

modification; whereas the derivatives (i.e., the myths, the theories, the pseudo-logical reasons invented and applied by men to justify their sentiments and actions) are much more pliant and responsive to pressure. What counts in forming the strength and prosperity of a people is religion, faith, myth, a devotion to some common ideal. "In a certain sense," he writes, "we might therefore propound this paradox: in the life of a people nothing is as real and practical as the ideal." We may compare with this statement the words of Mussolini: "One cannot accomplish anything great without passionate love and religious mysticism."

Probably of even greater importance as affecting Mussolini's thinking is Pareto's political doctrine. He conceived aristocracy and democracy to be complementary aspects of social development, each a constant factor and necessary to the whole process. But he also believed that the active element, the true propulsive power, is aristocracy. It is always a minority that determines events and rules men. It was in this sense that he formulated his theory of the circulation of naturally formed aristocracies as the fundamental historical law. According to this theory, societies owe their progress to the struggle between rival minorities, each of which is an élite, but each of which must be continually renewed by fresh elements from below. In any actual struggle, the theories or ideals proclaimed are merely catch-words or battle-cries by which the ascending minority gathers adherents from the masses to dispossess the minority in power. The freer the circulation of these minorities, the greater the progress of the nation. Mussolini put this theory into practice in 1922 when he substituted his élite of youth for the decadent ruling caste.

The bearing of such a doctrine on the problem of political democracy is obvious, though not everyone will choose to draw from it the ultimate conclusions, as Mussolini has done. It is a tragic irony of history that the World War, which was said to be waged "to make the world safe for democracy," has been followed by a general disillusionment regarding democracy, and in some cases, notably in Russia and in Italy, by a definite

repudiation of it. This reaction has already been the subject of much animated discussion, in which, however, one simple thing seems not to have been set in the high relief it deserves. That thing is the realization that *there never has been in history a rule of the majority*. Men, as a whole, whether through incompetence or indifference, are permanently incapable of self-government. Reforms have been achieved, crises precipitated, and, above all, revolutions consummated by active minorities. Mussolini's words strike at the heart of the matter: "History proves that it has always been the minorities, a handful from the first, that have produced profound changes in human society." The realization of this fact and the deliberate adoption of a technique by which a minority may be organized into an aggressive and efficient force lies behind both the Russian and Italian revolutions. "Realistic political thinkers in Europe," notes Mr. Walter Lippmann, "long ago abandoned the notion that the collective mass of the people direct the course of public affairs." In short, then, according to this current teaching, the experiment of political democracy has failed, since its basic assumption has been shown to be false.

There is, further, the æsthetic objection. Mussolini says: "Democracy has taken the style from the life of the people. Fascism brings it back by introducing a line of conduct in which there is color, force, picturesqueness, the unexpected, the mystic; in fact, all that counts for the soul of the multitude."

Although Mussolini has repeatedly disavowed any intention of making foreign propaganda, he has more than once taken occasion in his speeches in Parliament to sneer at the "democratic dark ages" and at the subterfuge of popular sovereignty. In this matter, at least, he is sealed of the same tribe as Lenin, who called democracy "a bourgeois superstition." And all the while the Fascist press throughout the length and breadth of the kingdom recites almost daily the articles of its anti-democratic creed: men are not equal; the voters are not intelligent; the voice of the people is not the voice of God; parliaments are not truly representative; complete democracy is in the nature of things forever unattainable, while the sham variety current in

western Europe and in America only adds hypocrisy to inefficiency and corruption.

V

I have been unable to discover the exact date at which Mussolini began to read William James; but probably it was before 1910. It is James as a pragmatist and as the author of such essays as "Great Men and their Environment," "The Moral Equivalent of War," and "The Will to Believe," who is here concerned. James's pragmatism had been popularized in Italy by Papini, who published in 1906 a very splenetic book *Il Crepuscolo dei Filosofi*, in which he gloated over the alleged discomfiture of the metaphysicians. It is extremely likely that Mussolini read this book; at least he must have known something about the commotion it caused. In giving his allegiance to James, he was not so much submitting to a new control as having his own ideas clarified and focussed. Mussolini's mind is essentially of the practical, extroverted sort, and is thoroughly unspeculative. It is always directed toward action. The pragmatic approach to questions is therefore native to him. Moreover, pragmatism is implicit or avowed in Machiavelli, Sorel, and Pareto; even, indeed, in Nietzsche, as has been generally recognized since the publication of Vaihinger's *Philosophie des Als Ob* in 1911. Accordingly, these intellectual influences converge to a remarkable degree.

Pragmatism is an approach to problems rather than a system, a method instead of a body of doctrines. James said: "The true is whatever proves to be good in the way of belief, and good, too, for definite assignable reasons." He further characterized pragmatism as looking forward rather than backward, regarding the world as continually unfolding. "It looks away from first things, categories, supposed necessities, to last things, fruits, consequences." Mussolini has adopted this "American philosophy," as he calls it, and insists as pertinaciously as James on the "cash-value" of an idea.

James's exposition of pragmatism was at the same time a polemic against absolutism in thinking. Mussolini's public

utterances are full of this sense of relativity. He discards fixed principles and preëstablished categories. He refuses to square his present with his past actions or to bind himself for the future. Inconsistency does not trouble him in the least; in truth, how could it, in view of his own amazingly tortuous career? "In politics," Pareto once observed, "men who start from one place find themselves arriving at another whither they had no intention of going." The only enduring life for Mussolini would be in "a universe with the lid off," such as James postulated. A world of endless flux and of incalculable possibilities must have shifting goals even for the statesman. Referring to his own essay "Forza e Consenso," quoted from above, Mussolini said in an interview reported in a Paris newspaper: "The opinions expressed in this article must not be considered as dogmas, but as expressions of the needs of today, which may tomorrow become relative. . . . Every program should be carried only to the right point." Mussolini's mental attitude is so completely reflected here that the statement acquires all the value of the typical. Fascist pragmatism is nothing if not empirical and eclectic.

Mussolini agrees entirely with James that pugnacity is an instinct of human nature that cannot be eradicated by mere denunciation. What, then, of war? Mussolini, I know, is generally regarded as a standing threat to world peace. To be sure, he opposed the war against Turkey in 1911, and even defended a policy of neutrality for a very brief time in 1914, only to become shortly afterwards a rabid interventionist and eventually an influential factor in bringing Italy into the World War on the side of the Allies. Likewise his verbal truculence since he became dictator has been notorious. He has used threatening or provocative language to Germany, Turkey, Yugoslavia, Greece, and, by implication at least, France.

It is also easy to find many utterances of Mussolini in praise of war, chiefly, it is true, from the days when he was urging the participation of Italy in the European war. In these he echoes the warnings of Machiavelli against the perils of neutrality. Machiavelli declared that any necessary war is just and that if

a prince maintains neutrality he will be left without a friend and will become the booty of the victor. Similarly, Mussolini asserts: "Neutralists have never dominated events; they have merely endured them. It is blood which makes the sounding wheels of history revolve." Later he speaks of the World War as life-bringing for Italy, while it has meant death to neutral Spain. He represents Proudhon as exclaiming "with that perennial truth which hides behind the mark of paradox that 'war is of divine origin.'" This last statement blandly ignores Proudhon's final verdict against war.

And yet, despite all the atmosphere of militarism which envelops the Fascist movement, no one knows as well as Mussolini that Italy dare not risk a great war, either now or in the near future. All the auguries, economic, political, and military, are against it. It may safely be assumed that Mussolini's bellicose talk is intended for effect upon internal conditions. His object is to heighten the national spirit and thereby to consolidate his own position. That such a proceeding may be fraught with unexpected perils, no sober student of history will question. But between that and willful running amuck, there is, after all, a great difference.

Of all the thinkers who have influenced Mussolini, William James alone strove to find a substitute for war. His important essay, "The Moral Equivalent of War," has, I believe, borne remarkable fruit in Mussolini's practice. James faces squarely the issue of whether mankind can afford to adopt a peace-economy. Not only have we inherited the warlike type and have had pugnacity bred into our very marrow, but we have an instinctive feeling that war is the best protection against our weaker and more cowardly selves. Without it, there is no scorn, no hardness, no valor, no steep of life. In comparison with its sacramental glory, pacifism seems mawkish and dishwatery. If war is to be done away with, an equivalent discipline must be organized; the competitive passion must be turned into other channels. Perhaps we can strive against the obstacles of nature, combat disease and social evils. "It is but a question of time," concludes James, "of

skillful propagandism, and of opinion-making men seizing historic opportunities."

It is surely not far-fetched to see the application of James's suggestion in certain measures recently taken by the Fascist government. With the ultimate object of making Italy self-supporting in the matter of foodstuffs, an elaborate campaign has been organized to augment the yield of grain by means of more intensive cultivation and the increased use of machinery. It was heralded in the newspapers and in posters throughout the country as "the battle of the grain." Similarly, when the desired results were obtained, "the victory of the grain" was triumphantly proclaimed. The movement from beginning to end was conceived and carried out in terms of struggle and contest. Other projects are on foot, such as the draining of swamps, the combatting of malaria, and the grandiose scheme for colonizing southern Italy from the surplus population of Sicily. All of these enterprises are being invested with national importance and conducted in such a way as to elicit the pugnacious instincts and gratify the spirit of adventure.

VI

The last of the six mentors to be noticed is Alfredo Oriani, novelist, publicist, and historian, who died, poor but proud, in 1909. He was poor because, living by his pen, he was unable to obtain a profitable market for his books; and at the same time he was too proud to violate his artistic integrity by catering to popular tastes. A few discerning minds recognized his genius toward the close of his life, but his fame has been chiefly posthumous and has not yet spread beyond Italy. Although Oriani's novels are certainly far above the average level of fiction, they would hardly suffice to give him a position in world literature. They are somber, realistic studies, resembling a little, in their mood of depression, the novels of George Gissing. It is evident that the author had a flaming love of beauty, but found physical and moral ugliness omnipresent in the life about him. Happily for him and for us, he was able in some of his other books to rise

above this disillusionment with actuality and to find his true life in devotion to the ideal.

Oriani's real significance for the Italy of today must be sought in his long historical work, *La Lotta politica in Italia*, and in his essays on public questions, especially in the volumes entitled *La Rivolta Ideale* and *Fuocchi di Bivacco*. In these books his usual laconic, epigrammatic style is suffused with a warmth of feeling that engenders true eloquence. He here writes like a Carlyle or a Michelet, assuming at times the fiery accents of a prophet, but without over-emphasis or false rhetoric. The exalted patriotism of these books suggests still another comparison, namely, with Treitschke.

Mussolini has discovered Oriani for himself of late years and has given added impetus to his fame by praising him in a speech before the Senate and by editing a complete edition of his works. Oriani is even sometimes spoken of as "the master of Mussolini;" and indeed it is not hard to believe that the latter cherishes for him a very warm feeling of intimacy and affection such as usually accompanies one's personal discovery—all the more, perhaps, because both men are natives of the same district of Italy, the Romagna. But it is impossible to think that the influence of Oriani upon the dictator is comparable to that of either Machiavelli or Sorel. It seems, rather, that Mussolini considers Oriani's writing as an admirable training-school in patriotism and unselfish service, and hopes that they will do for the present age what Mazzini's *Duties of Man* did for earlier generations of young Italians. It is interesting to note that the philosopher Gentile in his recent book, *What is Fascism?*, claims that the "idealism" of Fascism is in the best Mazzinian tradition. Possibly a liberal may be allowed to file a demurrer here.

Man's true vocation lies in the service of the ideal. *Solo l'ideale è vero* is a sentence which runs like a refrain through Oriani's essays. But how is man to conceive his ideal? It is here that Oriani's more distinctive thinking is developed. Neither a sterile individualism nor a diluted cosmopolitanism can satisfy man's deeper aspirations. He must feel himself the citizen of a nation. The essence of nationality, he explains, is the individu-

ality of a people which feels itself one, amid all the contradictions of its continuity, in contrast with other peoples. Italy has in the heritage of Rome the most inspiring of all national traditions. The glory and supremacy of the Roman Empire, the universal idea of Rome lasting throughout the Middle Ages, and the more human universality of the Church—what an incomparable legacy! Italy ought by all tokens to be the greatest and best of the nations of Europe. The proudest word of modern honor is St. Paul's *Civis romanus sum*. In his massive work, *La Lotta Politica*, Oriani devotes more than three-fourths of his space to the nineteenth century, making unification the pivotal point and treating all previous Italian history as a mere preliminary. But the Risorgimento was not achieved entirely by the efforts and virtues of the Italians themselves. A slothful acceptance of the fruits of unification would mean national decadence. Without some still loftier ideal, the "third Italy" would be a resurrection without life. But what can Italy do within its narrow confines? The future of Europe lies in other continents. The irresistible drift of events points to Africa as the field for Italy's colonial expansion. There lies her manifest destiny.

In such ways as these does Oriani foreshadow the "creative revolution" and the "spiritual imperialism" of Mussolini. The essential conservatism of the man appears in his social thinking. The Italian people urgently need the renewal of a right spirit within them, but they ought never to depart from their consecrated traditions. Religion must not yield to science, nor competition to socialism, nor the family to free love. Property is forever the true basis of society; it alone can give men self-respect and responsibility. "Democracy is fatally levelling; in order to raise the depths, it has to lower the summits." If the future is to be made secure, there must arise an aristocracy of character and intelligence. Oriani saw in the intellectual proletariat, of which he himself was such a distinguished member, the vanguard of this coming aristocracy of the spirit.

There is a close affiliation between Oriani and Mussolini in their ideas about the family. Oriani was from the outset extremely conservative on this point. One of his earliest books was

a sociological study of marriage, in which he opposed divorce and upheld the inviolability of wedlock. He was also an advocate of early marriage and of large families. It is well known that Mussolini has both talked and legislated along the same lines. He has imposed a tax on bachelors and has denounced birth-control with a more than Rooseveltian strenuousness.

Oriani was also an anti-feminist of sorts. He declared that all history testified against woman's claim to equality. Can we imagine a female Dante or Napoleon? Religions, empires, cultures have all been created by males. Genius is inexorably, fatally masculine. When Byron was asked by a woman how a member of her sex could become great, he answered, "By reaching the heart of a man." Women, so runs Oriani's comment, will never receive a more beautiful compliment nor a better counsel. A woman made us lose paradise; a woman alone can make us forget it. It is quite possible that Mussolini's change of attitude regarding the status of women may be due in part to the influence of Oriani. Mussolini's present views about the opposite sex may best be expressed in his own words. It should be remembered that he used to consort with female revolutionaries in Switzerland, and to have women as collaborators on his newspapers. He now says: "Women are the tender, gentle influence that represents the pleasant parenthesis in a man's life, an influence that often aids a man to forget his trials and fatigues but that leaves no lasting trace. The more virile and intelligent a man is, the less need he has of a woman as an integral part of himself. Women are a charming pastime, when a man has time to pass, a means of changing one's trend of thought, but they should never be taken seriously, for they themselves are rarely serious."

Immediately before the Fascists seized the government, Mussolini announced to his countrymen: "Our program is simple. We wish to rule Italy." Cynics are not wanting who say that this tells the whole story. Mussolini, they contend, has been actuated by ambition alone; his course has been the sport of opportunity. If the capture and retention of power has been the sum and substance of Fascism, then, indeed, is any discussion of

ideas or theories, or even policies, utterly illusory. But I believe that such an assertion is demonstrably untrue. Mussolini himself would be the last to deny that chance and circumstance have played an important part in fashioning his career. The goddess Fortuna is one of the oldest of Italian divinities, and she is as potent in the affairs of men at the present time as she was in the days of Machiavelli and his Prince. Nevertheless, ideas may spring from events, and elaborate theories may be based upon an historical process. Not only is this good pragmatism, it is also time-honored Italian doctrine. Vico taught it two hundred years ago. In the Beginning was the Deed.

As for Mussolini's ambition, that is hardly to be reckoned as in itself a grievous fault. Since ambition may be either good or bad, according to circumstances, the only pertinent question is: To what ends is it directed? Machiavelli said, having art and literature in mind, "It seems that Italy is meant to bring dead things to life." Mazzini, thinking of moral and political ideals, declared that Italy was to become a model for the whole world. It is with a similar confidence in the destiny of his country that Mussolini faces the unrevealed future.

THE PHILOSOPHER OF JEFFERSONIAN DEMOCRACY

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I

Few movements in the history of American politics and political thought have been of equal immediate or enduring importance with that associated with the name of Thomas Jefferson. And yet Jefferson never published anything other than very brief and inadequate discussions of the principles for which he stood. His only systematic exposition of his political ideas is found in his famous *Notes on Virginia*. This work, however, was written in 1781-82 and deals but remotely with the issues which were to occupy the stage after 1789. Neither in Jefferson's own writings nor in those of Madison and Monroe, his successors as official head of the Republican party and as president of the United States, do we find any adequate exposition of the theories associated with the era of Jeffersonian democracy. It is only in the extensive works of John Taylor of Caroline, a friend and associate of these men in the political battles of that period, that such an exposition is to be found. Jefferson wrote that "Colonel Taylor and myself have rarely, if ever, differed in any political principle of importance."¹ John Randolph said that Taylor's "disinterested principles" were "the only bond of union among Republicans."² And Timothy Pickering calls him "the Goliath of the party."³ As Henry Adams has said, Taylor was regarded as a political thinker of the first rank by the Virginia school and by many other leaders of his time,⁴ but it is equally true that his writings have occupied a position of obscurity since his death. This obscurity, however, does not

¹ Jefferson, *Writings* (ed. by Ford), X, 170.

² W.C. Bruce, *John Randolph of Roanoke*, II, 235; also 607.

³ H. C. Lodge, *Life and Letters of George Cabot*, 442.

⁴ *History of the United States*, IX, 195.

alter the fact that they were influential in their time and are today the best source of information concerning the principles of both the earlier and later phases of the movement initiated by Jefferson during the first years under the Constitution.

II

John Taylor was born in Orange county, Virginia, in 1750.⁵ At the age of ten he was left an orphan and was adopted by his uncle, Edmund Pendleton, of Caroline county. After being privately tutored, he entered the college of William and Mary, from which institution he was graduated in 1770. He then took up the study of law in his uncle's office, and, in 1774, was admitted to the bar. When the Revolution broke out he enlisted, rose to the rank of major, and served in a number of northern campaigns. Under the influence of Patrick Henry and Richard Henry Lee, he became dissatisfied with Washington's command of the army and resigned his commission to return to Virginia and be elected to the House of Delegates.⁶ In 1780, however, he helped to raise a regiment of volunteers, of which he was made lieutenant-colonel, and took some part in the final campaign of the war. He then resumed the practice of law, and with great financial success, for in 1792 he was able to purchase an estate, Hazlewood, on the Rappahannock near Port Royal, to which he retired. The remainder of his life was devoted to agriculture, politics, and writing.

While practicing law he continued to take an active part in politics. As during the Revolution, so in 1787-89, he sided with Patrick Henry against Washington. We have it on the testimony of Madison that he was one of the most influential Anti-Federalists in Virginia.⁷ He also supported the election of William Grayson and R. H. Lee, both opponents of the Federalist cause, to the

⁵ The best account of Taylor's life and career is W. E. Dodd, "John Taylor of Caroline, Prophet of Secession," *John P. Branch Historical Papers*, II, 214-52. Shorter accounts are found in *Encyclopedia of Virginia Biography* (ed. by L. G. Tyler), II, 88; and Marshall Wingfield, *History of Caroline County*, 190.

⁶ See K. M. Rowland, *Life and Correspondence of George Mason*, I, 341, where the work of Taylor in the Virginia Assembly of 1779 is referred to.

⁷ Madison, *Writings* (ed. by Hunt), V, 41.

United States Senate. When, after four years of service, Lee was incapacitated by tuberculosis, Taylor was appointed to fill his place. However, although he was elected by the legislature for the six-year term just beginning, he refused to serve more than a few months. Why he disliked holding the office is not clear, but it is certain that the leaders of the Jeffersonian group strongly wished to have him remain in the Senate.⁸ He again served in that body for a few months in 1803, and also from December, 1822, until his death in August, 1824. He served, too, a number of terms in the Virginia legislature. There the most notable of his acts was the introduction of the Virginia Resolutions, the general theory of which he appears to have suggested to Jefferson several months before.⁹ It is unnecessary here to discuss the political controversies in which Taylor took part, for his importance in the field of practical politics is limited to the affairs of his own time, whereas the many writings which he prepared in defense of his views are of much more than contemporary importance.¹⁰

III

During his first short term in the Senate Taylor wrote a number of pamphlets, most of them dealing with the economic issues

⁸ In a letter to Pendleton written from Philadelphia February 23, 1793, Madison said: "I seize the opportunity in this case with the more avidity, as it permits me at the same time, to tell you how much we have been charmed with the successor to Col. R. H. L. and to entreat your coöperation with a number of his other friends in overcoming his repugnance to his present station. His talents during the fraction of time he has been on the federal theatre have been of such infinite service to the republican cause, and such a terror to its adversaries, that his sudden retirement, on which he is strongly bent, ought to be regarded as a public calamity and counterworked by all the means his friends can use." *Writings*, VI, 123.

⁹ See his letter to Jefferson, June 25, 1798, reprinted in the *Branch Papers*, II, 271-76.

¹⁰ On his work in the Senate see *Annals of Congress*, 8th Cong. 1st sess. (1803-04), 50; 18th Cong. (1823-24), 558-66, 601-02, 659, 675-87. See also the *Memoirs of John Quincy Adams*, VI, 263, 312, 344, 348, 356; Monroe, *Writings* (ed. by Hamilton), V, 121-49, 161. The sketch by Dodd referred to above, and the comments in Henry Adams, *History of the United States*, I, 148, 338, II, 105, and in Beveridge, *Life of Marshall*, IV, 146, are also of value. There is an interesting discussion of Taylor's early attitude toward secession in G. Hunt, *Disunion Sentiment in Congress*.

then being hotly contested in the cabinet and in Congress.¹¹ Perhaps the one most worthy of analysis is his *Definition of Parties*. This pamphlet was published anonymously, but we have it on the word of Jefferson that Taylor was its author.¹² The thesis of this production is that the whole work of the federal government since the Constitution went into effect "has been an exclamation for money. Obliterate from the statute books, all laws in favor of paper, and the code would be almost a blank. It exhibits a succession of new burdens upon the 5,000,000 which are a succession of delicious repasts to the 5,000."¹³ Taylor's choice of words may be somewhat peculiar, but it is evident enough that he has no sympathy with the Hamiltonian financial program. He argues that the government which was intended for the good of the whole people has, as a result of these measures—especially the funding of the federal debt at par and the assumption of state debts, been prostituted to the uses of a small minority. Both the rights of man and the rights of property have been usurped by the "paper interest." We now have a government, not of numbers, nor even of property, but of one kind of property—stocks and bonds. This sort of property, he declares is really a species of political rather than natural property, and it is the more dangerous because it is capable of indefinite expansion. "Land cannot be increased by law—paper money may. Land, being incapable of an artificial multiplication, cannot by increasing its quantity, strengthen its influence—with paper the case is different. Land cannot in interest be at enmity with the public good—paper money is often so."¹⁴

¹¹ The economic aspects of two of these pamphlets are admirably summarized by C. A. Beard in his *Economic Origins of Jeffersonian Democracy*, Ch. VII.

¹² In a letter to Madison, May 15, 1794, he refers to its authorship, and says of it that "it is one of those things which merits to be preserved." *Writings* (ed. by Ford), VI, 511.

¹³ *Definition of Parties*, 5.

¹⁴ *Ibid.*, 9. "A paper junto can find an interest in restraining population even at the expense of the constitution. The danger and difficulty, with which our frontiers are extended, invariably engenders an intrepid republican spirit. The enmity of this spirit to an intriguing junto, is so constant, that it is already regarded as a deadly foe. Besides, an aristocracy for ever obstructs mankind in the pursuit of competency and happiness, because by compressing them within the

He estimated that at the time when he wrote about one-fifth of the people were excluded from the suffrage or from office-holding.¹⁵ The nation would be greatly benefited if the million people excluded were to be admitted to political power, and the five thousand security holders were to be excluded. We have permitted a system of privileged orders to arise in this country—a secretary of the treasury, an incorporated bank, and a funding system. “The first will sway the legislature, by the magic of private interest. The second is a successional body having exclusive rights and legislative weight, without election or representation—and the third is a mode of representation, equivalent to the rotten boroughs of England.”¹⁶ His conclusion is a radical one: “A constitutional expulsion of a stock-jobbing paper interest, in every shape, out of the national legislature, can alone recover the lost principles of a representative government, and save the nation from being owned, bought, and sold.”¹⁷

Taylor was almost as deeply interested in the affairs of his plantation as he was in the political and economic struggles between the Hamiltonian and Jeffersonian parties. He was one of the earliest students of scientific agriculture in America, and was the first president of the Virginia Agricultural Society. In 1803 he published a little book, *Arator*, which deals with the “practical and political” aspects of agriculture. It was easily the most popular thing he ever wrote, six editions being printed by 1819. Most of the book deals with the practical problems of plantation management—care of the soil, rotation of crops, and the like. But he also makes entirely clear his own opinions concerning the relation of agriculture and government.

On the first page of the preface we are informed that agriculture and politics are the primary causes of our wealth and liberty. If the one be “vitiated in practice” we have poverty; if the other, oppression. He agrees with the opinion which Jeffer-

locality of their devices, they are more easily brought to the magical mint, and coined into money.” *Ibid.*, 13.

¹⁵ *Ibid.*, 11.

¹⁶ *Ibid.*, 16.

¹⁷ *Ibid.*, 15.

son had expressed in his *Notes on Virginia*, that agriculture, or rather the agriculturists, are the true guardians of liberty.¹⁸ However, if agriculture be subjected to the device of paying bounties to manufacturing it cannot play its proper rôle in society.¹⁹ Furthermore, the tariff is only one of a number of devices for transferring the wealth of the whole to the pockets of a few, and for "rendering governments too strong for nations. . . . Armies, loaning, banking, and an intricate treasury system, endowing a government with the absolute power of applying money, under the cover of nominal checks, are other devices of this kind."²⁰ Particularly is it true in America, where agriculture is the interest of the vast majority of the people, that every device of this kind weakens and impoverishes the majority of the people while it benefits a small minority. We are constantly being told that by giving bounties to manufacturing we shall make ourselves independent of Europe and furnish a greater market for agriculture. "It would be scunder reasoning to contrast the high price of manufactures here, with the low price there, to prove that they ought to give bounties to agriculture to provide a market for manufactures."²¹

IV

The same theory of the relation of economic and political life underlies Taylor's four large treatises which appeared between 1814 and 1823. The first, and probably the most important, of them is *An Inquiry into the Principles and Policy of the Government of the United States*. Like all of Taylor's later works, it is discursive in the extreme, and it is frequently obscure, but, nevertheless, it remains as the most considerable contribution of

¹⁸ *Arator* (4th ed.), vi.

¹⁹ *Ibid.*, 19.

²⁰ *Ibid.*

²¹ *Ibid.*, 22. A pamphlet, probably by Taylor although it appeared under the pseudonym "Curtius," which appeared just after *Arator* is the *Defence of the Measures of the Administration of Thomas Jefferson* (1804). In this he discusses and defends the program of economy and simplicity in government, the Louisiana Purchase, and the land policy of Gallatin, which, he says, prevented "the immediate monopoly of the public lands by a few leviathan speculators."

Jeffersonian democracy to political thought. As Charles A. Beard has said, it is one of the few important systematic studies of American politics.²² At the same time, it must be conceded that it appeared twenty years or more after its proper time. It is intended to be an answer to certain theories found in John Adams's *Defence of the Constitutions of the United States* (1786-88) and in *The Federalist*. Taylor contends that the theories which underlie these works were derived from old and out-worn forms of government, while the newer and sounder principles of government which have been developed in America were neglected.²³

The book begins with the statement that Adams holds that aristocracy is natural and therefore inevitable. Taylor believes that aristocracy, kingship, or, as he puts it, any system of orders, has been reared upon artificial foundations. Adams, he says, bases his arguments upon the history of peoples and governments entirely different from those of the United States, and his statements are little more than a reiteration of the ancient superstitious plea: "it is the will of God."²⁴ However, although these old rules do not apply here, although the older forms of privilege—monarchy, nobility, military supremacy—were abolished, no barriers were erected to prevent the creation of a new order of privilege—"paper and patronage."²⁵ We who pity the ancients for their dullness in being duped by oppressions so clearly seen by ourselves; we who were quick to see the fallacies in Dr. Johnson's argument of "taxation no tyranny," have not fully grasped the fact that taxation is slavery when the object of the tax is not the public good but the enrichment of a small class. We "are submitting to be taxed and enslaved by patronage and

²² *American Political Science Review*, XXI, 9. Beard devotes a chapter of his *Economic Origins of Jeffersonian Democracy* to this book. He there treats it as though it were solely an economic argument. Such an interpretation necessarily neglects many important aspects of Taylor's theory.

²³ *Inquiry*, v. "... both had paid too much respect to political skeletons, constructed with fragments torn from monarchy, aristocracy and democracy, called, in these essays, the numerical analysis; and too little to the ethereal moral principles alone able to bind governments to the interest of nations."

²⁴ *Ibid.*, 14.

²⁵ *Ibid.*, 42

paper, without being deluded or terrified by the promise of heaven, the denunciation of hell, the penalties of law, the brilliancy and generosity of nobility, or the pageantry and charity of superstition."²⁶

Following these broad charges come several hundred pages in which, with the aid of many more or less relevant excursions, the argument is elaborated. They amount, of course, to an expansion of the writer's earlier pamphlets. At great length he rings the changes upon his argument that the bank, the tariff, and the debt have created a new feudal system in the United States. This system, aided by an unnatural alliance with commerce, which is in itself a useful and harmless function, has become an oppressive parasite upon the real source of wealth, the land.²⁷

Taylor then goes on to consider what he terms "The Good Moral Principles of the Government of the United States." His discussion of these principles is not always of the clearest, but apparently he has reference to the following: first, such division of powers as will enable the people to retain their legal and political rights, and will "reduce power to that degree of temperature, which may make it a blessing and not a curse;" second, political equality; third, freedom of religion and of in-

²⁶ *Ibid.*, 61. He continues: "A spell is put upon our understandings by the words 'public faith and national credit,' which fascinates us into an opinion, that fraud, corruption and oppression, constitutes national credit; and debt and slavery, public faith. . . Public faith is made with great solemnity to mount the rostrum, and to pronounce the following lecture:

"Law enacted for the benefit of the nation, is repealable; but law enacted for the benefit of individuals, though oppressive to a nation, is a charter, and irrevocable. The existing generation is under the tutelage of all past generations, and must rely upon the responsibility of the grave for the preservation of its liberty. Posterity, being bound by the contracts of its ancestry, in every case which diminishes its rights, man is daily growing less free by a doctrine which never increases them. A government intrusted with the administration of public affairs for the good of a nation, has a right to deed away that nation for the good of itself or its partisans, by law charters for monopolies or sinecures; and posterity is bound by these deeds. But although an existing generation can never reassume the liberty or property held by its ancestor, it may recompence itself by abridging or abolishing the rights of its descendant."

²⁷ *Ibid.*, Sections III-V. Cf. Beard, *op.cit.*, 334 ff.

quiry; fourth, popular sovereignty.²⁸ In other words, the principle of privileged orders is a bad principle; the principle of equality before the laws is a good one. And it is only by relying upon these good principles that we can retain our liberties; neither the perfection of individuals nor the all-righteousness of the majority is dependable.²⁹ A concomitancy between exclusive privilege and political misery has appeared constantly throughout the annals of human nature; a concomitancy between political equality and political happiness has endured in America for thirty-five years in more than thirteen separate governments. From these facts we may derive a general law that political misery will inevitably follow from hereditary orders or "factitious interests." Mr. Adams's policy, Taylor says, would divide a nation into several interests, and unite power; his principle would divide power but unite the nation in one interest.³⁰ Under the former theory, the only reliance is upon an artificial and dangerous system of balances and orders; under the latter, "power having been first sparingly bestowed on the government, is next minutely divided, and then bound in the chains of responsibility." Adams does not trust the people to keep themselves, much less the government, under control. He has so little confidence in the people that he can only hope that the "three thieves can never carry off the bag of money, because they can never agree about its division."

This contention is further elaborated in Taylor's attack upon

²⁸ *Ibid.*, 400 ff. Taylor challenged the correctness of John Adams's appeal to natural law, but he does not hesitate to do the same thing himself, although, of course, with somewhat different conclusions. He states that "a theory or hypothesis cannot even pretend to plausibility, unless it is deduced from some general law of nature." *Ibid.*, 403. Again he says: "The basis of our policy . . . is the constancy of nature, in her moral, as well as in her physical operations."

²⁹ *Ibid.*, 437-46.

³⁰ *Ibid.*, 428-29. To those who are familiar with Adams's *Defence* it is unnecessary to say that Taylor is writing, although not very clearly, about the division of powers between the people and their government, and between the state and federal governments. Adams had dealt primarily with the division of powers among three departments in the same government. For the correspondence between the two men growing out of this book, see Adams's *Works*, VI, 455 ff.

the principle of authority, a principle which he believes to be at variance with the doctrine that the judgment and honesty of a nation are more likely to produce liberty and happiness than the judgment of a few rulers.³¹ The principle of American government is that of dependability upon the judgment of the nation; it is the only one which can prevent nations from being converted "into the engines of an aspiring individual or a faction, for enslaving themselves, and parties into beasts, to be ridden by a few artful men into office." A government erected upon the principle that the few should decide and the many meekly submit will soon result in the substitution of slavery for liberty.³²

In the United States, an aristocracy can be introduced only by laws for transferring property from the many to the few.³³ The landed interest can never form an aristocracy, for the simple reason that it is itself the majority interest, and it is the essential characteristic of an aristocracy that it be a minority and that it subsist upon the majority. Neither could the Cincinnati of the United States ever form a privileged order, because rank or title is in itself incompetent to such an end; "but the funding and banking system could; because such laws, without title, possess this competency."³⁴

Four parties (the argument continues) have arisen in the United States; two of principle—the republican and the monarchical; two of privilege and interest—stock and patronage. Some attributed the existence of parties to the intrigues of Jefferson, to French influence, or to other transitory and fluctuating causes.

³¹ *Ibid.*, 512 ff.

³² *Ibid.*, 548-49.

³³ *Ibid.*, 551-79. Poverty may contemplate with toleration the wealth which flows from industry and talents; it is "justly exasperated against the wealth which flows from fraudulent laws." The introduction of aristocracy into the United States by law will result in unusually violent animosities between rich and poor, because in this country the means for controlling them are less. It is to the fraudulent legal modes of acquiring wealth that "mankind are indebted for the pernicious and impracticable idea of equalising property by law." Destroy the evils of legal privilege and monopoly and no more will be heard of the equally artificial and almost equally undesirable alternative of abolition of private property. *Ibid.*, 562-64.

³⁴ *Ibid.*, 571.

Such opinions are incorrect, and are proved so by the fact that parties continued after these temporary causes ceased to exist. The real cause, then, was the Hamiltonian financial system, the laws which enriched the minority at the expense of the majority.³⁵ As a result of these inequitable laws, the spirit of faction or party has developed. This spirit, Taylor believes, is not natural to free governments; "it is only natural to those where aristocracies or parties of interest are artificially created and combined by law. . . . Patrician and feudal parties were made by conquered lands; church parties by tythes, offerings and endowments; military parties, by wages; patronage parties, by offices, bribes and sinecures; and paper parties, by stock, interest and dividends."³⁶ If everyone were really in a position of equality before the law, these parties would come to an end. In the Constitution the principle of equality was applied to states by placing each state upon an equal position and forbidding partialities between them. And in his conclusion Taylor returns to the thesis that it is only by adherence to the good moral principles which he had earlier discussed that "this dreadful party tyranny" can be brought to an end. "If therefore, these essays should only prove, that it is the office of a republican government to protect, but not to bestow property, they may protract the period during which our government may remain the servant of the nation."³⁷

V

If the *Inquiry* made a considerably belated appearance, Taylor's next book was distinctly a tract for the times. *Construction Construed, and Constitutions Vindicated* was published in 1820, and the chief subjects discussed in it were Marshall's opinion in the case of *McCulloch v. Maryland* (1819), and the

³⁵ *Ibid.*, 569.

³⁶ *Ibid.*, 571. For an earlier view of the causes of party in the United States see Taylor's letter to Jefferson, June 25, 1798. *John P. Branch Historical Papers*, II, 271-76. There he not only discusses the financial ills of the nation but also proposes several political remedies, among them short terms, rotation in office, and a new method of repealing laws.

³⁷ *Ibid.*, 656.

Missouri Compromise, which had been agreed to by Congress and approved by the President only a few months before the book's appearance.³⁸ But although these were the particular issues referred to, it remains that the central thesis of the work is that unlimited government is never justified.³⁹ The essential corollary to this principle is that the federal government of the United States was intended to be, and should be, surrounded by limitations upon its power. These limitations, Taylor finds, are fast being cut away by the agencies of that government, especially the Supreme Court.

In developing his argument against unlimited governments the writer devotes a chapter to a discussion of the theory of sovereignty. This term, he says, is not one which may be used with any justification of any government established in the United States.⁴⁰ Sovereignty is "by its nature a unit."⁴¹ It is incapable of division, and it may not, therefore, be divided between Congress and the people. It must be in one or in the other. According to the principles of the American Revolution, sovereignty is really the natural right of self-government inherent in the people. Governments, on the other hand, have only conventional or limited powers. "The natural rights of self-govern-

³⁸ In a letter of January 19, 1821, Jefferson wrote: "If Congress fails to shield the States from dangers so palpable and so imminent, the States must shield themselves, and meet the invader foot to foot. . . . This is already half done by Colonel Taylor's book [which] is the most effectual retraction of our government to its original principles which has ever yet been sent by heaven to our aid. Every State in the Union should give a copy to every member they elect, as a standing instruction; and ours should set the example." *Writings* (ed. by Ford), X, 184.

³⁹ A government "possessing an absolute power to distribute property, according to the pleasure, the pride, the interest, the ambition, and the avarice of its administrators," is the master rather than the servant of the nation. *Construction Construed*, 12. In this country we have guarded against interference with the freedom of religion by the government, but we have failed adequately to guard against interference with property. The result has been that there has been created "a monied interest at the expense of the whole community, which is gradually obtaining an influence over the federal government, of the same kind with that possessed by a similar sect over the British Parliament." *Ibid.*, 233.

⁴⁰ Section 3.

⁴¹ *Ibid.*, 27.

ment, and the consequent rights of dividing and limiting power, might have slept forever in theory, except for the American revolution; which seems to have been designed by Providence for the great purpose of demonstrating its (*sic*) practicability and effects."⁴² As in the *Inquiry*, the divisions of power which Taylor was interested in were those between the people and their government, and between the state and the federal governments, rather than that between the three branches of one government.

In the formation of the state governments great care was taken to protect the rights and powers of the people against their governors; in the formation of the federal Constitution the ends which were to be pursued by the central government were carefully limited. The framers of that constitution overlooked, however, the possibilities of construction as a means of extending those powers beyond their legitimate limits. In the case of *McCulloch v. Maryland* the Supreme Court has held that the federal government has power to adopt means, even though the ends in view are themselves beyond the delegated powers of that government.⁴³ In that decision great reliance was placed upon the "necessary and proper" clause of the Constitution. But this section, if properly construed, restricts rather than enlarges the powers of Congress, because it explicitly limits the agencies of the central government to the specifically granted powers. Marshall's doctrine of implied powers is an equally unsound basis for extending federal powers, for when an implied power is confronted with a positive power, and a power reserved to the states is a positive one, the latter must hold.⁴⁵ The Constitution places no limitation upon the sphere of state taxation except in the taxing of imports and exports;⁴⁶ and the powers of the state and federal governments in the internal sphere were intended to be concurrent except where federal powers were limited. It follows, therefore, that the exemption of the bank

⁴² *Ibid.*, 52.

⁴³ *Ibid.*, 82-84.

⁴⁴ *Ibid.*, 165.

⁴⁵ *Ibid.*, 171.

⁴⁶ *Ibid.*, 92 ff.

from state taxation results either in an inequality of taxation or a total exemption from it, both of which are inconsistent with the principles of free government, as well as contrary to the specific provisions of the Constitution.⁴⁷

After discussing the bank decision throughout the whole of five chapters and parts of as many more, Taylor takes up the Missouri Compromise. He holds that it was not the question of slavery, but rather the idea of a balance of power between the two great sections of the country, that produced this absurd controversy and this even more absurd solution.⁴⁸ A balance of power between nations can but lead to hostility and war. A balance between sections in the same nation will have the same effect. The new system will divide and destroy the old confederation and turn Congress into a diplomatic body whose function will be to adjust the controversies which will be sure to arise.⁴⁹

⁴⁷ Further on he says: "The federal is not a national government; it is a league between nations. By this league, a limited power only over persons and property was given to the representatives of the united nations. This power cannot be further extended under the pretext of *national* good, because the league does not create a national government." The exercise of sovereign powers over persons and property, "even by a government really national, and absolutely sovereign, has uniformly resulted in oppression, although the persons thus legislated out of natural rights, are actually represented; but under the federal government, in which local and personal interests are not, and cannot be represented, an exercise of these powers, utterly unnecessary to a fair and free government, must produce mischiefs of ten-fold magnitude. These local and personal interests were therefore left as politically and geographically arranged, into distinct compartments; and a federal was preferred to a national government, because that commixture of local interests, and inextricable sympathetic cohesion, which infuse into election and representation their substantial value, was stopt by the nature of the state governments, and could not be extended to a national government, by melting up the states into one vast empire." *Ibid.*, 234-35.

⁴⁸ *Ibid.*, 291.

⁴⁹ "The new confederation to be substituted for the old one, ought to be stated without disguise, that it may be duly estimated, and compared with its rival. It proposes to draw a geographical line between slavery and no-slavery; to train the people on each side of it, into an inveterate habit of squirting noisome provocations at each other through the press; and to create a degree of animosity as an ally to ambition and avarice, quite sufficient to induce a preponderating balance to exert its whole energy, in obtaining exclusive advantages. . . Congress would be converted. . . into a convention, meeting annually to make new bargains for obtaining a preponderance, and local advantages over each other; or in fact to make annually a new federal constitution. To those who saw the difficulty of

"The subject of internal slavery was definitely disposed of by the federal compact."⁵⁰ If we interfere with that settlement, we are preparing the way for all manner of troubles. Left alone, the evils of slavery will slowly be righted, as the history of the past thirty years shows, and a slow process of reformation is the only one which can successfully deal with a problem of this magnitude. Furthermore, Taylor argues at some length, the Compromise was unconstitutional. In attempting to legislate concerning the property rights of individuals, Congress greatly exceeded its delegated powers.⁵¹

If most of the discussion concerning the Missouri Compromise is a remarkably accurate prophecy as to the subsequent history of the struggle between the sections, as well as of the majority opinions in the Dred Scott case (1857), the concluding paragraph of the chapter is a thinly veiled foreshadowing of the Civil War: "There remains a right, anterior to every political power whatsoever, and alone sufficient to put the subject of slavery at rest; the natural right of self-defence. . . It is allowed on all hands, that danger to the slave-holding states lurks in their existing situation, however it has been produced; and it must be admitted, that the right of self-defence applies to that situation; of the necessity for which the parties exposed to the danger are the natural judges: Otherwise this right, the most sacred of all possessed by men, would be no right at all. I leave to the reader the application of these observations."

VI

At least as early as 1793 Taylor had written pamphlets against the financial policy of the federal government. In 1822 he published a book devoted to the same theme. But whereas the earlier productions had as the main subjects of their attack the funding of the debt, the assumption of state debts, and the establishment of the bank, this book was aimed against the

making that we now have, the consequences of this species of policy will be quite plain." *Ibid.*, 292.

⁵⁰ *Ibid.*, 294.

⁵¹ *Ibid.*, 295-314.

protective policy which was just beginning to creep into tariff legislation. *Tyranny Unmasked* is the rather sensational title given to what is probably the first extensive argument against the protectionist theory in the United States. Taylor takes as the subject for his discussion the report of the Congressional committee on manufactures under date of January 15, 1821. This report was in large part the result of Clay's continued arguments in favor of the "American system."

The sage of Hazelwood was a throughgoing believer in the doctrine of *laissez faire*, as all of his earlier writings indicate very clearly, and the theory which he opposes to that of the protectionists is an adaptation of Adam Smith's principles. "The division of labour, if left free, invigorates industry, increases skill, and diffuses general benefits. . . . A monopoly established to transfer the profits of labour from south to north, is a precedent for transferring such profits from the upper to the lower States on the Mississippi. In both cases the monopoly would be bestowed on rich capitalists, and be paid by poor industry."⁵² A government established on the principle of equality before the law will, if the protective system be adopted, serve the small minority at the expense of the great majority. In order that a group of capitalists may be enriched, it will inflict a deep wound upon all of the natural divisions of labour.⁵³ The discrimination against the agriculturists would be particularly great because the tariff would not merely raise the prices of manufactured articles which the farmers have to buy; it would also have the result of shutting agricultural products out of foreign markets by prohibiting to them "sundry exchanges, thus lowering the value of such products."⁵⁴

Taylor was not content to attack the protectionist principle as an isolated bit of doctrine. As might be expected, he finds that it is only one aspect of the tendency toward the creation of a tyrannical government in the United States, a tendency which has as its main ear-marks the extension of federal powers and the building up of "an overflowing treasury."⁵⁵ It was one of

⁵² *Tyranny Unmasked*, 32-33.

⁵⁴ *Ibid.*, 222.

⁵³ *Ibid.*, 40.

⁵⁵ *Ibid.*, 4-21.

the fundamentals of his creed that consolidation and a too well supplied treasury lead to an oppressive government. In order to prevent this unhappy state of affairs from going any further he proposes a mutual state-federal veto on all constitutional questions.⁵⁶ The framers of the Constitution did not intend that the President or Congress should, with the consent of the Supreme Court, exercise powers prohibited to the federal government by that document. Since the Court has failed to act as a check upon the ambitions of the central government, it follows that only the state governments can serve that necessary function. It is eminently sound that they should do so, and it is the political departments in the states which should act to resist unconstitutional laws. "The State governments are in fact tribunes of the people, entrusted with rights bestowed for the preservation of their liberty, and if they surrender these rights, by surrendering the power of defending them, they will be as faithful to the people, as the Roman tribunes would have been had they surrendered their veto to the consuls and senate, or to the praetors."⁵⁷ There is no danger in such a concurrent veto—to give it the name later used by Calhoun—for the states would act only to prevent the introduction of an innovation; they could not usurp power. On the other hand, the Court, particularly in the case of *McCulloch v. Maryland*, has permitted the assumption by the federal government of new and constitutionally unjustified powers. As an additional safeguard to the mutual veto there is the check of popular election; no such check exists upon the power of the Supreme Court.

VII

Since nearly everything that Taylor ever wrote touched upon the question of state rights, it was peculiarly fitting that his last book, *New Views of the Constitution of the United States* (1823), should be devoted entirely to this problem. This book presents one of the most extensive discussions ever prepared of the historico-legal argument in favor of decentralized government in the United States. Like much of Taylor's other writing, it was a pre-

⁵⁶ *Ibid.*, 260 ff.

⁵⁷ *Ibid.*, 263.

liminary to the later and more bitter stages of the state rights and nullification controversies, as well as an early justification of secession. During the next three decades many southern writers drew from it the materials out of which they framed the arguments which served as the literary defence of southern sectionalism.

Taylor begins his discussion in this volume with the contention that the Declaration of Independence is the basis of American government. This document, he says, offers proof that union and the sovereignty of the states are entirely compatible.⁵⁸ The states were independent political communities in 1776, and they have never surrendered to the central government anything except certain specified powers. The whole course of proceedings in the convention which framed the Constitution is indicative of the fact that this was intended to be a federal, and not a national, government. In their instructions to their delegates the states used the word "federal," carefully avoiding "national."⁵⁹ In the Randolph resolutions the term "national" was used, but that term was definitely rejected by the convention.⁶⁰ A negative over state laws was proposed by the Pinckney plan; it was therefore carefully considered and deliberately rejected. No one ever went so far as to suggest that a single court should have such a negative. This "political monster" is the result of subsequent construction.⁶¹ When, on June 25, the term "United States" was substituted for "national," it meant that the idea of a consoli-

⁵⁸ "If the declaration of independence is not obligatory, our entire political fabric has lost its magna charta, and is without any solid foundation. But if it is the basis of our form of government, it is the true expositor of the principles and terms we have adopted. The word 'united' is used in conjunction with the phrase 'free and independent states,' and this association recognises a compatibility between the sovereignty and the union of the several states." *New Views of the United States*, 2. Although Taylor does not make clear at this point whether he believes that sovereignty is found in the people or in the governments of the states, it may be presumed from the discussion in *Construction Construed* that it is in the people. See Sec. V above.

⁵⁹ *Ibid.*, 14.

⁶⁰ Taylor based his account of the convention upon its journal and, to a lesser extent, upon the notes taken by Yates and the account by Luther Martin. Madison's notes were not published until many years later.

⁶¹ *Ibid.*, 19. See also 44.

dated government had been defeated. Furthermore, those who argued in favor of a supreme national government—Hamilton, Randolph, and Madison—believed that they had failed.⁶² The proceedings of this convention show, then, that the central government of the United States is not a national but a federal one. It possesses no innate sovereignty. "It is conventional, and of course subordinate to the sovereignties by which it was formed. . . . In the creation of a federal government, the states exercised the highest act of sovereignty, and they may, if they please, repeat the proof of their sovereignty, by its annihilation."⁶³

He then comes to the problem which was to be argued so frequently a few years later: In this federal system, who is to decide in case of dispute between the central and state governments? His conclusion is much the same as that found in *Tyranny Unmasked*. The state and federal governments should exercise a mutual right of control.⁶⁴ For a federal body (the Supreme Court) to decide controversies of jurisdiction between the federal and state governments would be to make the former a judge in a case involving itself.⁶⁵ According to the plain words of the Constitution, the federal legislature is strictly limited in its powers. The federal courts are also limited and to the same degree. There "would have been a manifest absurdity in coupling a supreme national judiciary with a legislature not national."⁶⁶ The supremacy of the Supreme Court only lifts it above the inferior federal courts, not above the supremacy of the Constitution.⁶⁷

⁶² *Ibid.*, 32; also 49, 63. For Madison's answer to Taylor's charge that he favored a consolidated government, see his letters to R. S. Garnett and N. P. Trist in his *Writings* (ed. by Hunt), IX, 176, 475.

⁶³ *Ibid.*, 37. For summary of his argument see 176-77.

⁶⁴ *Ibid.*, 147.

⁶⁵ *Ibid.*, 121.

⁶⁶ *Ibid.*, 127.

⁶⁷ *Ibid.*, 142. "The supreme court was not intrusted with the trial of impeachments, as was proposed in the convention, because its judgments might deprive individuals of a few political rights; but it is contended that it possesses, constructively, a power to try impeachments of whole states, and to deprive them of political rights, infinitely more important. It was not allowed to disqualify an individual to hold a federal office, one political right, but it is said to be tacitly authorized to deprive all the individuals of the United States, of reserved constitutional rights without any restriction. It was not intrusted with a power to

If it was fitting that Taylor's last book should have been devoted to the state rights issue, it was equally appropriate that that book should have as its penultimate chapter a sixty-page discussion of the relative merits of centralized and federal governments.⁶⁸ The author's opinion on that point is summed up in these sentences: "It seems to be nature's law, that every species of concentrated sovereignty over extensive territories, whether monarchical, aristocratical, democratical, or mixed, must be despotick. In no case has a concentrated power over great territories been sustained, except by mercenary armies; and wherever power is thus sustained, despotism is the consequence." The geography of this country and the character of the people, he continues, "unite to demonstrate that the ignorance and partiality of a concentrated form of government, can only be enforced by armies; and the peculiar ability of the states to resist, promises that resistance would be violent; so that a national government must either be precarious or despotick. By dividing power between the federal and state governments, local partialities and oppressions, the common causes of revolution, are obliterated from our system."⁶⁹

VIII

Even a brief survey of the voluminous writings of John Taylor of Caroline demonstrates the truth of Beveridge's remark that Taylor was "the most fruitful of Republican intellects."⁷⁰ More than that, he was the most consistent. There are not a few in-

deprive the descendants of a guilty individual of any political rights whatsoever; but, say the consolidators, it may deprive all the descendants of the present generation of political rights, by its precedents . . . to confound legislative and judicial power in the same body of men, creates a tyranny, which both makes the law and applies the sword; and to enable a single court to cut off state rights by a supreme power of construing the constitution, would confound the power of creating a constitution, with the power of construing laws, and render these rights as precarious, as human heads are, under an absolute monarchy." *Ibid.*, 151-52.

⁶⁸ *Ibid.*, 237 ff. The last chapter is entitled "Construction" and consists of long extracts from Swift's allegory, "Tale of a Tub," with applications to the methods of the Americans who are construing this into a nationalistic system.

⁶⁹ *Ibid.*, 238.

⁷⁰ *Life of John Marshall*, IV, 58 n.

consistencies to be found in the construction of his arguments, but the way he adhered to certain general principles during a political and literary career of nearly fifty years is truly remarkable. Doubtless such consistency is not greatly to his credit, but it does inspire one with a certain admiration for the hard-headed old southerner who clung so passionately to the doctrines which he espoused during the opening years of the American Revolution. Furthermore, it is this continued adherence to certain aspects of the radical theory of the Revolution which helps to illuminate the course of development of American politics between 1775 and the Civil War. Taylor began his writings under the influence of Patrick Henry, carried them on as a supporter of the Jeffersonian movement, and ended by being the prophet of Jackson's particularistic policies and Calhoun's philosophy of government. His writings illustrate, as do those of no other man, the way in which the class and section to which he belonged adopted successive political and legal attitudes, all based on certain common principles, toward the movement for union and toward the growing supremacy in that union of another section with somewhat different interests and ideals.

Of his first speeches and writings little is known except that they were representative of the ideas of Patrick Henry and George Mason. It was during the early stages of Jefferson's opposition to the program of Hamilton that Taylor came to be a publicist of national reputation. The early pamphlets, *Arator* and the *Inquiry*, contain a more complete exposition of the principles of that movement than is to be found in any other group of writings. Popular sovereignty, *laissez faire*, strict construction of federal powers, the agrarian basis of American government, simplicity and economy in government—these and the other aspects of the Jeffersonian creed he dealt with over and over again. Moreover, Taylor carried on the battle in favor of these principles long after Jefferson had retired to Monticello, after Madison had virtually gone over to the enemy by adopting many of the theories advocated by the young nationalists, and while Calhoun was just beginning his career as one of the leaders

among this nationalistic group. His *Inquiry* is evidently an attempt to bring the new Republicans back to the old principles.

The same principles are applied in his final trilogy to more definitely contemporary problems. In *Construction Construed* he makes out an excellent case against one of the greatest opinions of that master of constitutional construction, John Marshall. And he prophecies very accurately the difficulties which the Missouri Compromise was to bring in its train, and indicates much of the argument which the majority of the Supreme Court was to take, more than thirty years later, in declaring that compromise unconstitutional. In the *Inquiry* Taylor had advocated the principle of rotation in office; this book furnishes much of the argument which Jackson was to rely upon in his war against the bank and in his opposition to federal aid to internal improvements, discusses the theory of indivisible sovereignty which was later to be used in Calhoun's famous *Discourse*, and sketches in the arguments which were employed to justify secession and "the war for southern independence." Two years later, in *Tyranny Unmasked*, he developed his earlier arguments against the comparatively innocuous tariff of the Federalist régime into a full-fledged philosophy of free trade as against the protectionist theory of Clay. Believing that the tariff was only one aspect of the dangerous process of centralization going on in the United States, he discussed at some length the principle of a state veto upon unconstitutional acts of Congress about which he had written to Jefferson twenty-four years before when he proposed "the right of the State governments to expound the constitution." It will be remembered that it was shortly after this that Calhoun abandoned his nationalistic views and became the leader of the opposition to the protective system, and that, following the passage of the "tariff of abominations" in 1828, he discovered the principle of nullification, which he later modified and wrote into his philosophical works as the principle of the concurrent veto. In Taylor's last book, *New Views of the Constitution*, his earlier state-rights arguments are elaborated and bolstered by a long discussion of American constitutional history. Practically all of the contentions which Upshur,

Calhoun, and other southern defenders of state rights were to use in opposition to national supremacy and to the theory that the Supreme Court is the final interpreter of the Constitution are set forth in this work.

In view of the unrivaled comprehensiveness with which Taylor dealt with nearly all aspects of the theory of limited political power which played an important part in American history between 1775 and 1861, it is somewhat difficult to understand why his writings have received so little attention since his death. One reason is probably to be found in the time of their appearance. With the exception of his early pamphlets, his works were published either too late or too early for popular acceptance. The *Inquiry* would have been opportune in the seventeen-nineties; it appeared at a time when there was little interest in the principles with which it dealt. The last three books came before the South was ready to begin its final and vigorous advance toward nullification and secession. But the lack of timeliness would not have been an insuperable obstacle to great popularity in later years, had it not been for Taylor's unfortunate literary style. If he had been able to express his views with less repetition, more clarity, and a less quaintly awkward style, his books might easily have become the best known expositions of southern sectionalism. There are excellent bits of writing scattered through his three thousand pages; but they are obscured in dull and unnecessary verbiage. It is easy to sympathize with a remark of John Randolph in a letter to Garnett about one of Taylor's books: "For heaven's sake, get some worthy person to do the second edition into *English*." No other significant writings in American political thought, except perhaps the second and third parts of John Adams's *Defence of the Constitutions* and the same author's *Discourse on Davila*, place such obstacles in the path of the reader. This is not to say that Taylor's books were not read by many leaders of his section; for they were both read and used. It is only to say that they would have received far more contemporary attention, and might since have become the classic statements of both the earlier and later phases of the Jeffersonian movement, had they been condensed to one-third their volume and written in a more attractive style.

GOVERNMENT AND THE PRESS¹

Reporting the Political News at Washington. First of all, let me say that there is no question on which you can develop more controversy than the reporting of political news. Within the profession, within the newspaper business, there is a great deal of controversy, and has been for many years, particularly as to whether political news is fairly reported, impartially reported. I have listened to a good deal of discussion on that point. I have recognized, as have others in the newspaper business, the trend of the times—the so-called decrease in the strength of the editorial page, for instance, and the increase in the amount of material of a semi-editorial flavor printed in the news columns.

The first branch of this topic, namely, reporting political news as it affects our domestic politics, seems to me to require an understanding, first, of the pressure and the difficulties that newspaper men face in handling news of campaigns and, second, of some of the pitfalls which they encounter between campaigns. I make that division arbitrarily, because the subject seems to divide itself in my own mind into those two general fields.

It is much easier to report political news between campaigns than it is during campaigns. For one thing, your audience is not sensitive between campaigns. Especially just after a campaign has been concluded there is a sort of feeling that the victorious candidate, the newly inaugurated President, the newly introduced Congress, should have what we call popularly a square deal—as if, by inference, they did not have a square deal before. Newspaper men call the first few months of a newly elected President's term the "honeymoon period." After a certain time there is less tolerance again; the "honeymoon" is supposed to be over, and generosity of attitude on the part of the press toward the triumphant candidate becomes less apparent. This illustrates, in passing, what I mean by the sensitiveness of the audience; and the newspaper man is sensitive to this thing we call public opinion. Perhaps he should not be. He should be as judicial at one time as another, and he should be just as scrupulously impartial at one time as another.

¹ The two papers that follow are adapted from addresses delivered by the authors at the meeting of the American Political Science Association in December, 1927. Mr. Lawrence is president of the Consolidated Press Association, and also of the *United States Daily*. Mr. Essary is Washington correspondent of the *Baltimore Sun*. *Man. Ed.*

Newspapers today are all—at least they profess to be—independent. I would like myself to put quotation marks around the word “independent.” Every time you send a questionnaire to newspapers listed in the newspaper directory, and ask them for their political affiliations, they invariably reply “independent”; and there is no way to get away from that classification. Some of them, which have been a little more liberal-minded, have chosen the classifications “independent Republican” and “independent Democrat”—as if there could be that kind of classification. But, after all, perhaps the best way to classify a newspaper is to find out which presidential candidates it has supported over a period of time; and you can make up your mind whether or not a paper that has never supported any candidate of another party is actually independent.

I mention this because, much as we might not like to admit it, the news content of the newspapers of today depends to no small extent on the editorial policies of those papers. This is less true today than it was ten years ago, but the condition still exists. We must recognize the fact that, whether the editor is present or not, the people who select the material for the newspaper each day are conscious of the editorial policies of the publication; and hence a very good thing is frequently relegated to some inside page or the waste-basket if it is favorable to the cause they are opposing, while the meritorious thing about the candidate they are supporting is usually put on the first page and given all the prominence necessary. That is a very important factor in political campaigns.

We have also the strictly partisan newspapers, which make no pretense of being anything else, which not only print every item of news that supports the candidate in whom they are interested, but which print also the manufactured stuff of his campaign; and there is more of that printed than you can possibly imagine. I do not suppose that the headquarters of our political parties would like to give out the facts and figures on those things. But a good many of us know that a great deal of such manufactured matter is printed, particularly in the small newspapers. What I object to is that it is not labeled. It is marked “Washington,” and is sent out with a special date line and appears to be written by someone supposed to be disinterested. In political campaigns we have that to contend with, and we have also the activities of the various headquarters which are trying to manipulate the natural channels of news—trying to “make news.” A good many “stunts” are performed

during campaigns purely for publicity purposes. But I personally doubt very much whether the influence of what is printed during the political campaign amounts to much.

I have rather held for many years to the belief that the material that is printed between campaigns is the most important part of political news. There we have some very interesting situations. Writing, as I do, for about one hundred sixty newspapers of all political complexions, a dispatch every day, I find that the complaints of leaning to this side or the other are apt to come between campaigns when one party is in charge of the government and the other party is absent. When the Congress is adjourned there seems to be dissatisfaction on the part of newspapers during a period in which the minority is not represented—a situation with which I have a great deal of sympathy, but which I hardly know how we could correct. Certainly when Congress has adjourned for eight or nine months of the year, and the executive branch of the government is in the possession of either the Democratic or the Republican party, all the news that emanates from Washington is about that particular administration. Members of Congress who ought to be dissenting are on trips to Europe or Panama or Hawaii, and we have no minority dissent.

So between campaigns the party in power gets much the better of it, and I believe that the party out of power, or at least the newspapers which support the party out of power, are more sensitive at that time. I know that this is true because the same phenomenon occurs when a Republican administration is in power as when a Democratic administration is in power. You usually find the same kind of dissatisfaction that nobody is at hand to conduct a crusade and expose the party in office. There is a little of that at all times, but between campaigns unquestionably the party in power gets most of the publicity and benefits immensely. Of course, in a sense, what an administration does, what it is trying to accomplish, is political news between campaigns, and a man may make a wonderful record on a particular activity a year or two after he has been elected. A member of Congress may do something at a time when he is not particularly in the public eye for reelection, and he derives a benefit which is lasting. I believe that we form impressions about our public men, especially those who are up for elective offices, during periods when no campaign is in progress; and unless they do something to upset them, we are likely to keep those impressions at the polls.

The news side of the newspaper is, therefore, the one that I should watch most closely if I were a candidate for office. I believe that the reporting of the activities of government officials in a fair way will have, in its last analysis, more effect on the voter in the making of public opinion than the interpretative articles of some of our editorial pages.

Those who contend that the editorial page has declined in strength have failed to take note, it seems to me, of the great improvement on the news side of the newspaper, where many more interpretative articles are printed today than ever before. In the old days the editorial page gave you background and information besides. It did not always tell you how to think; it often gave you information on which to base your opinion. Today, if you are reading the newspapers closely, you are getting most of that out of the news columns.

Now, we may say that the reporting of political news really begins back home in the local units, in the cities and counties and states, and that we should consider that phase of it as much as we should the phase of the national government. From time to time I hear discussions on that point. I find, too, that the pressure from the public on the editor is invariably to make the newspaper's columns fair. If you report a mass-meeting conducted by Democrats and do not give it a square deal, it will make enemies for your paper. In many a city and state campaign the newspapers which do not care to take sides particularly, or at least actively, in the campaign content themselves with an adequate presentation of the issues of the campaign in their news columns; and you will find that candidates will be just as happy if they are given an even break in the news columns as if they were discussed editorially from day to day in the editorial columns. I know of one conspicuous case in one of the western states in which a certain newspaper took part. It was very pro-Republican, and I know that the Democratic nominee was very much dissatisfied with the situation in the news columns, although content with what was happening in the editorial columns.

From what I have said you may infer that I think that the strictly political side is the vital thing in the making of public opinion, and I hope I am surprising you, and yet pleasantly, when I say that there is a growing interest in the non-political side. I feel that the Washington correspondent of the future, while he will always have to know his politics, will be better equipped for dealing with the news if he knows his economics. I feel that we are in the midst of an economic era. Our political questions have an economic background. You can hardly touch a question that is in dispute today without discovering

that it is an economic question, and that the controversy is mostly between those who understand the fundamentals of economics and those who do not. It is a very serious thing, because our newspapers, built as they are on the theory that they must satisfy all groups, are unable, evidently, to present all the information necessary to clarify the public mind on some of these vital questions.

I was very much surprised last autumn when I delivered a talk over the radio through a net-work of stations to discover in my mail afterwards that many people had learned for the first time what the McNary-Haugen bill was. This technical subject—an economic subject, after all—had been in the press for three or four years. The newspapers had ample opportunity to explain it. And yet from many, many letters I received from people who evidently were newspaper readers, they had not had a clear presentation, or, at least, one that they thought they understood. Now that evidently means that while we are touching in our newspapers the high spots of the news, we are not driving home the background, or else the newspaper reader is superficial and is not availing himself or herself of the information presented in the newspapers.

It is true that the newspaper assumes that you read it regularly and constantly. Perhaps you have noticed how rarely a newspaper repeats a news item. If you miss a single issue of a newspaper, you miss that event. You miss the discovery of it, you miss the second story of it, and then the next time it is mentioned it is referred to in parentheses, so to speak, as if you knew. For instance, if you did not happen to read the newspapers on the day on which the report of the Agent-General of Reparations was presented, when you picked up the newspapers of succeeding weeks you found discussion the significance of which you did not grasp. Unless you went back to the day on which the report was printed, you were not likely to know from the newspapers what the Agent-General had recommended. I could give other illustrations. No doubt every one has noticed the same thing. I believe that this must be the fundamental reason why the newspaper reader is unacquainted with the background of our fundamental issues.

The newspaper can hardly be blamed for its policy under the present business set-up of the publishing world. I always feel that I should defend the newspaper against attacks, particularly when I know that there is an undercurrent of dissatisfaction from the so-called class-group with our newspapers. Bear in mind that the newspaper, business institution that it is, must pay its expenses, must pay them very largely

out of advertising. A very small part of the income of the newspaper comes directly from the reader. It may be an unfair set-up, but it is a fact; the advertising of the newspapers comes, unfortunately, out of consideration of the quantity, not the quality; and it is the demand for quantity of readers which makes it incumbent upon most publishers to get as many readers as they can, irrespective of who they are and what they are, so as to be able to satisfy the buyer of space, who invariably wants to know "how many." Thus the newspaper becomes a sort of omnibus. It is supposed to satisfy every group. It has a sporting page to reach a certain group, it has a financial page to reach a certain group, it has a comic page to reach the juveniles, and it has certain other things—women's features, and so on down the line—until you have in the newspaper a sort of composite. You cannot expect a newspaper which is striving to reach all those groups to give its entire news contents over to any one group. You cannot expect a newspaper to report even national news out of proportion to other news.

You may pick out almost any newspaper, and you will find that the ratio of news to advertising is frequently uneven—more often it is something like sixty-five per cent advertising to thirty-five per cent news. This thirty-five per cent news content must be divided between entertainment and information. Take as an illustration even the *New York Times*, which is striving to satisfy the serious-minded reader; even the *Times* must give space to all kinds of activities to an extent that hardly permits the publication of the amount of information, in the way that the *London Times* gives it, on matters of state. We have nothing in this country that compares with the *London Times*; and perhaps that is one of the reasons why we are not inducing more able men to enter public life. We are not presenting to them the constructive side of government as we should.

One of the reasons, too, may be the tendency to caricature and ridicule, which has grown so rapidly during the last several years. I believe that the pendulum has swung too far in that direction. I believe that those of us who want better men in public life should consider how discouraging it is to the average man and woman who might enter public life to see men ridiculed, and frequently suspected of unworthy motives, when they may be doing a conscientious piece of work. For instance, away from Washington you get an impression of Congress that is not altogether pleasing; and sometimes you get the same impression there. It depends upon how you are going—how seriously you pursue the subject. Men and women in Congress, chosen as they are by

their districts back home, are very good as individuals go. They are trying to do their job. Their constituents are driving them in one direction or the other. Most of them are trying to serve the people, and they are unnoticed by the newspapers for the most part. About the only times when they get into the press are when they do something sensational or are in the midst of a controversy that may be in the public eye. We do not, in other words, always use the press to encourage men who are in public life; and it all goes back to the fact that we have not the space in our newspapers to devote to the national government. It is a sad thing for a newspaper man to confess; but it is true; it is because the newspaper has become all things to all men. It is very important to have a record of what goes on in our government. But it is more important that the people should take an interest in what is going on in that government; and under our present scheme of things we are not getting that interest.

All this has its reaction in Washington. Nothing is more discouraging to the senators and to the members of the House themselves than the empty galleries, including the press galleries, and the fact that the newspapers pay no attention to the things on which members of Congress spend days and nights working. You cannot expect men to work for the public interest when no attention is paid to what they are doing. Unhappily, the reporting of that kind of news is restricted by urgent space considerations. We do not get the quantity of it printed that we should.²

There is in Washington a storehouse of information available to the public for the asking, and the departments tell me that the number of inquiries each year is increasing; that business men, for instance, are asking the government more questions each year; that the government is coöperating more and more with the public. Indeed, I believe that the newspapers are responsible for placing too great emphasis on the regulatory side of government and not enough on the coöperative side of government. The government is collecting information from one end of the country to the other, to make it available to the people.

² The *United States Daily*, of which Mr. Lawrence is president, represents a highly significant step toward remedying this situation. There had been earlier attempts to assemble and publish the sort of information referred to, but they were largely futile, and until the *Daily* was founded no one had tried its now well-known and very successful formula of putting this material into a newspaper carrying advertising, and conveying to readers authentic and clearly presented governmental information very much as the variegated contents of ordinary newspapers are conveyed. *Man. Ed.*

Publications, pamphlets and documents, are being printed at public expense, and usually are distributed at nominal charges. If the newspapers are unable to give space to these many things, we must do what we can to let people know what is available, so that those who are interested may be aware of the material and have it sent to them.

I wish I could say to you that we have in this country an unprejudiced handling of political news, because it would be fine to think that we are practicing impartiality in presenting to the people the information on which they base their judgments; but unfortunately it is not so. The partisan element enters into it very strongly; it enters into it even to the extent that the officials themselves frequently in describing the activities of their offices insert a prejudice which is recognized by the opposite side. You have heard a good deal of criticism from time to time about the use by government officials of their offices to propagandize the particular things in which they are interested and to advertise themselves. There is a natural tendency, perhaps, on the part of human beings to emphasize the work in which they are engaged. I believe that this in itself is not so harmful as the tendency to color the news according to the wishes of the newspapers or publications. I am happy to say that the situation in this respect is constantly being improved. But I am telling you no secret, I know, when I tell you that there are in the House of Representatives a good many correspondents who are the secretaries to congressmen, who write for their local newspapers, and who necessarily cannot present a very unbiased account of what their employers are doing.

We have tried in the press galleries of Congress to eliminate men who are in the pay of organizations and associations that have legislation pending. No man can be admitted to the press galleries who does not sign a pledge that he has no connection with any organization which has legislation pending. A code of ethics has been developed. The Washington correspondents are trying to enforce that code from time to time, but a good deal of this matter gets out just the same, and there is no law against a correspondent sending out news of Congress to serve a special interest, even though he does not go to the press galleries. Admission to the press galleries is not so important to the man who can go out and obtain information from various sources. Some change for the better will undoubtedly take place as the public grows more familiar with the problem here under discussion.

Then we have the difficulties with which the press services are faced. Again and again a press service is accused of being partisan, of favoring

this candidate or that candidate. I remember that in the campaign of 1912 I was reporting for the Associated Press. I was assigned to go along with Governor Wilson, and there was another Associated Press reporter with President Taft and a third with Colonel Roosevelt, and we used to compare results the morning after to see what the other candidates had obtained in the way of space and the number of words. It was pretty well balanced. The difficulty was that President Taft was not at that time making many trips, and hence there was considerable disappointment in his organization that he was not sharing the wires with Colonel Roosevelt and Governor Wilson, who were out on speech-making tours.

Frequently it is the fault of the candidate, who does not use his opportunities as much as he might; for the most part, the newspaper men engaged in distributing news for the press services are fair and honest and are not chargeable with any of the sins of omission that I have just described. The press services, nevertheless, are accused of bias. Scarcely a campaign goes by that somebody does not think that it is the avowed purpose of the press associations to advance the cause of some particular candidate. Sometimes it looks that way because several days go by without anything from the other candidate, and it looks as if one candidate has all the space.

Then, too, news breaks at inconvenient times. A world series game occurs on the same day that someone makes a very important speech, and on that occasion that speech must be cut to make way for the details of the game. I shall never forget an occasion when I was travelling with Woodrow Wilson and one of the newspaper men suggested to him that a rather important speech that he had intended to deliver on a succeeding day should be postponed to another occasion. He asked why, and the newspaper man said, "Well, the world series is on tomorrow, and you won't get anything much printed on it." Mr. Wilson simply sighed and said that things had come to a pretty pass when public affairs had to be conducted that way; and yet the man who made the suggestion was friendly. There is no doubt that the candidate who selects the occasion and opportunity for publicity frequently gets the better of it.

I know something also on the other side of the problem. One day some years ago a certain political treasurer had to make a report to Congress at a time when it was investigating campaign expenditures, and he had one or two uncomfortable facts to disclose. He selected a day during the world series. I believe that the incident was covered in only a couple of paragraphs on inside pages.

The reporting of political news as such will be transcended in the next few years, in my judgment, by the reporting of economic news. That will have a great bearing on our politics. We are talking about tariff revision; we are talking about the financing of foreign countries through private capital; we are talking about farm relief. All are matters of economics. We face large economic problems of flood control, the use of water power, the development of inland waterways, government ownership in one form or another, the power of the central government as contrasted with what the obligations and powers of the states ought to be. As the country grows more closely knit, as the telephone, telegraph, radio, air mail, make us a unit, so to speak—certainly a political unit—as we grow more and more homogeneous in our characteristics, these great economic problems will require the best thought that we can bring to bear through an impartial press.

DAVID LAWRENCE.

Washington, D. C.

President, Congress, and the Press Correspondents. It must be apparent to all thoughtful readers of American newspapers that Washington has become the great national news center, perhaps the greatest single news center in all the world. This has come about partly through an ever increasing centralization of power in the federal government, power that extends in a direct line to every basic industry in the nation as well as to our political, our cultural, and our social relations. Also it has come about, in part, through the movement to Washington of literally hundreds of national and international organizations.

Practically every interest in our life as a nation responds in a degree to the activities and vibrations of some agency of the government. These interests, either consciously or unconsciously, have learned to listen for their master's voice in Washington. The great banking and credit system, for example, looks to the Federal Reserve Board for its inspiration. Wall Street, sometimes regarded as a sort of super-government, is reacting more and more to federal orders, decrees, or mere gestures. The railroads bend to the will of the Interstate Commerce Commission; the mercantile marine to that of the Shipping Board. Agriculture seeks its panaceas at the hands of Congress. Organized labor lives side by side with that body. Education is yielding to federal supervision, as is highway construction, water-power development, scientific research, foreign trade, commercial practices, and a score of other interests, great or small. There was a time when the federal

government concerned itself primarily with the national defense, delivery of the mails, maintenance of navigable rivers and harbors, enforcement of federal statutes, guardianship of the Indians, currency, payment of pensions, control of public lands, and a few minor matters. But that time has passed; indeed, it is almost forgotten.

It is because of the colossal influence of the government, and of the interests that revolve about it, upon the country at large that American newspapers have found it both desirable and necessary to maintain in Washington more than five hundred active telegraphic correspondents, not to mention another regiment of writers for magazines, trade papers, and religious publications. From a purely professional view-point, Washington correspondence has now become institutionalized. It has become a very vital part of the make-up of every progressive newspaper. From a public point of view, the corps of Washington correspondents may be regarded as a body of unofficial ambassadors of the American people, at the seat of government. These men are the eyes and ears of the country at Washington. It is largely upon their reports of what transpires at the White House, in Congress, and in the executive departments that the public relies for its information as to the acts and policies of the federal organism. It is upon this information primarily that the great body of the people bases its political judgments. This involves a very grave responsibility on the part of these writers. It demands of them scrupulous fairness and as near literal accuracy as may be possible, within human limitations, in the matter which is daily spread before their millions of readers.

It should be reassuring to the country to know that there is literal and absolute freedom of the press in its relations with the federal government in so far as any actual, implied, or attempted control over what is written in Washington is concerned. This means that every Washington correspondent may write at any time anything that impresses him as legitimate news, subject only to those confidences which he must respect and subject to certain rules which may be laid down, e.g., as to a direct quotation of the President. Neither Congress nor the administration has any right, nor presumes to have any, to discipline any correspondent, except when one of these rules is violated. His report may be objected to and protested against on the floor of Congress. Or a statesman, on occasion, may take matters in his own hands and physically assault the journalist who has given offense. This has happened many times, but without serious casualty. The point I

make, however, is that no censorship in any form is applied; and none could be enforced, were it attempted.

Such discipline as is imposed is laid upon the members of the corps by the corps itself. Under an act of Congress, the press galleries of the House and Senate are placed under the absolute control of a standing committee of correspondents. This committee passes upon the credentials of all newspaper men seeking admission. Rules are laid down that these men must have no personal interest in any pending legislation, must represent no outside interest (particularly a chamber of commerce or a stock exchange), and must in all instances be telegraphic correspondents. If a correspondent is engaged in any press agenting, he is required to post the fact on the gallery bulletin board and must identify his client. Beyond these few regulations, we are free to observe and to write what we may please regarding Congressional activities.

A recent example of disciplinary action on the part of the standing committee might be cited at this point. The correspondent of a Philadelphia newspaper was found a few months ago to be on the payroll of the Washington headquarters of the so-called Power Trust. This fact was brought out in sworn testimony before the Federal Trade Commission. The correspondent in question might have been within his rights if he had given public notice of his connection to the press galleries and if he had set up the claim that he was a press agent. But he did neither. On the contrary, his private employers, when called upon to explain his association with themselves, went to pains to explain that he was not a press agent but a "mere tip-off man." There was no condoning such a relationship, of course, and although the correspondent enjoyed great personal popularity, the standing committee barred him from the press galleries and his newspaper promptly discharged him from its service.

Because of the controversy that flares up from time to time over what is described as inspired publicity at the White House and over the relationship of the press to the President, it might be of interest to set forth the exact truth regarding that relationship, how it is maintained, and how it results.

In recent years the White House has assumed a greater degree of news importance than in the more distant past. A President who takes his rôle seriously as party chieftain becomes the fountain head of Congressional as well as Administration policies. This was true of Roosevelt, of Wilson, and, in a sense, of Taft and Harding. It is essentially true of President Coolidge. We have come, therefore, to look to

the White House for more and more of that information which is necessary to us, if there is to be an intelligent understanding of the measures upon which we must comment.

To facilitate this, there has grown up a system of press conferences with the President. They were initiated, in a small way, by Roosevelt. He adopted the plan of calling in certain of the correspondents when he had anything important to impart to them, and once in a while, as, for instance, when he launched his first conservation congress, he called in the entire corps. President Taft went farther. Before entering the White House he had been secretary of war and had found much profit and some enjoyment in his press conferences in the War Department. He arranged to meet us in a body once a week. Mr. Wilsom, when he first went to Washington, increased the conferences to two a week. When the World War came on, however, he found it desirable to abandon the conferences altogether, and they were never renewed by him. President Harding revived them on the basis of two a week, and President Coolidge has kept them going.

Until the middle of the Harding term, these semi-weekly sessions at the Executive Offices were free and easy. They were attended by all the accredited correspondents who cared to be present and by certain visiting editors or foreign journalists who went as our guests. Questions were propounded without any restraint whatever and were answered or not by the President, as he felt inclined. This cross-fire between the head of our government and representatives of the press was a matter of particular interest and some astonishment to foreign newspaper men,—men, I might add, who would never have dreamed of directly catechising so important an official of their own governments.

Then came the Harding slip in connection with the Disarmament Conference, when he mistakenly answered a question as to the application of one of the treaties to the mainland of Japan. This greatly embarrassed him; it embarrassed the Disarmament Conference; and, as will be recalled, the President felt impelled to issue a formal statement retracting what he had said. This incident caused a complete change in the intercourse of the press with the President. Instead of submitting verbal questions to the Executive, some of them premeditated, others propounded on the spur of the moment, we were told that all queries must be submitted in writing and should be in the President's hands fifteen minutes before the conference. This was to enable him to ponder his replies and to decide in advance what questions he should answer and what ones he should ignore.

The conferences have never been the same since. The correspondent has been placed at a disadvantage, in that his written question may be passed over by the President, without any one but the questioner and the questioned knowing about it. In other words, the proceeding is largely *ex parte*, so to speak, and to that extent decidedly unsatisfactory to many of us. Mr. Coolidge has hedged his conferences about, moreover, with other restrictions, for which he has been widely criticized. He declines to permit us to quote a question which he has failed or refused to answer. We may not even refer to such a question. Indeed, he does not relish the quotation of a question responded to.

From the beginning it has been a rule of presidents that they must not be quoted directly by the press, in answer to inquiries or otherwise, unless specific authority is given. I stand for that rule fully and sympathetically, even though in doing so I find myself in conflict with many of my colleagues. These colleagues believe that the President should be willing to assume full responsibility for whatever he says that is intended for publication, and not unload all of the responsibility on the press. Many of my associates go even farther and insist that if the President is not willing to be quoted after his press conferences, the conferences become farcical and should be abolished. They add that as matters now stand the President gains the benefit of inspired publicity, but puts himself in a position to repudiate, with or without qualm, anything that may be printed which embarrasses him or looks different to him in print from what he expected.

With at least two of these views, I heartily disagree. In the first place, as I have already indicated, I do not think it incumbent upon the President to stand sponsor for a quotation or a series of quotations after he has replied to questions submitted to him by the press. I do not believe that he could afford to do this. If twice a week he were quoted on every conceivable matter brought to him by us, from the location of bathing-beaches in the District of Columbia to the disarmament discussions at Geneva, he would become, in the eyes of the country and of the world, a mere presidential babbler. He would be a laughing-stock in every foreign capital and in most of the editorial offices at home. He must protect his dignity and prestige against that kind of thing, and in order to do it he must maintain his rule against direct quotation.

Mr. Coolidge has gone so far in this direction as to kill the convenient "White House Spokesman." That fictitious character was set up by many of the newspaper men in Washington and was quoted system-

atically by them when actually they were quoting the President. Mr. Coolidge several months ago took exception to this, and while I cannot reveal how it came about without violating a confidence of the White House press conference, it is no secret that the Spokesman is now dead and will probably never be resurrected.

How are the Washington correspondents to impart authority to presidential news, therefore, one may ask, when the President may not be quoted, nor even a White House Spokesman? Are we, as correspondents, to assume all responsibility for what Mr. Coolidge, for instance, may say, and divide none of that responsibility with the source of our news? Not at all. For my part, I have found plenty of devices which serve me when I want to charge a given piece of information to the White House, not one of which, thus far, has been demurred to by the President. I can say, as I have said scores of times, that "the White House today announced," etc., etc; or that "it can be stated with White House approval"; or that the "President authorized." These phrases have appeared over and over in every American newspaper, and will continue to appear; and I can give the assurance that in every instance they are used to carry views or announcements made directly to the corps of correspondents by the President of the United States himself.

Nor do I, for one, argue that, in any event, the press conferences at the White House should be abandoned. They serve a highly useful purpose. They are distinctly to my advantage as a working journalist at the capital, by giving me twice a week a slant upon the President's mind. I am able to sense some of his mental processes and to acquaint myself with his attitudes. This is helpful to me in interpreting Administration policies, even if it does not always give me concrete themes upon which to write. I may go to five or six of these conferences and come away without a scrap of what we call "spot" news. But at least I have some intimate close-up of what the President is thinking or the lines he may eventually take on a given policy. All this, moreover, is of value to our readers; and, after all, our readers are our clients—our actual bosses. It is our obligation and our business to give them at all times the best information regarding all subjects upon which they are entitled to enlightenment. The White House press conferences, restricted though they are, work measurably to that end.

On the score of inspired publicity—presidential propaganda—there is something that should be said. It is a favorite charge of editors who are frankly hostile to the man in the White House that the Executive abuses the opportunity his press conferences give him by feeding

to the country only that line of information or of opinion most advantageous to himself. In a large sense this is true. Presidents do seize these opportunities. They do use them for all they are worth. By means of them, they undertake to strengthen themselves politically, or to make their policies more appealing. It is the human thing for them to do, and no President with whom I have had contact as a journalist, whether Democrat or Republican, has been above this practice.

The President is, of course, exceptionally circumstanced to carry on this sort of campaigning. Whatever he says or whatever he does, no matter how trivial, is looked upon by most newspaper men as news. His commonplaces and his platitudes get space which no other person could hope for. The men assigned by their papers to report his activities naturally write whatever proceeds from him that might remotely interest the public. And the editors print it day after day, even though many of them inwardly revolt at it.

But it is by no means true that the Washington correspondents lend themselves, consciously or unconsciously, day after day to presidential designs in the matter of favorable publicity. It is our duty to know when we are being imposed upon by a seeker of inspired propaganda, whether he be a President, a Congressman, or an Anti-Saloon Leaguer. If we do not know it, we are unworthy to represent our papers in Washington. We ought to be sent back to the journalistic kindergarten for a little primary training in reporting. And any one of us who cannot conscientiously abide by the rules of a presidential press conference has the right to withdraw. The rules are admittedly one-sided. They are made by the man who runs the show. They handicap the rest of us. But we do not have to accept them. We can remain outside; and it is a fact with which the country at large may not be acquainted that more than one of my associates does remain outside, in order to exercise a greater freedom in what he writes.

Although it is true that the relations between the press and the federal government are on a more satisfactory basis at the present time than ever before, with each side freely recognizing the rights of the other, it is by no means true that we live in a state of undisturbed brotherly love. Clashes are inevitable. Public men continue to resent many of the things that we feel bound to print about them. Efforts are still made to restrain us or to divert us, and occasionally to draw and quarter us. Presidents occasionally bar an individual journalist from the White House and the executive departments as punishment for some real or fancied offense. Legislators chastise us once in a while

from the floor of the House or Senate. But these things are not serious and merely reassure our editors and our readers of our independence.

Legislators complain bitterly in season and out that the men who report Congressional activities for the American newspapers pay vastly more attention to the trivial things that come to the reporters' notice than to the constructive achievements of the House and Senate; that a bit of political intrigue may be played for a column in the papers while a stroke of statesmanship is dismissed with a paragraph; and that if Congress is in disrepute before the country, it is because of the perversity of those who occupy the press galleries rather than the malpractices of those who occupy the floor. The alibi, however,—if I may call it that—does not hold. If there were more serious statesmanship in Congressional life, more would be written about it. It would be welcomed by us with enthusiasm. It would be generously advertised on the first pages. If there were less charlatanism in the House and Senate, the two bodies would be regarded less flippantly by those whose patriotic and professional duty it is faithfully to reflect and appraise the activities of the men who make legislative history.

Let me add that if the Congress of the United States has fallen low in public esteem—and who can doubt it?—if there is a lack of confidence in its collective wisdom, and if its passionate patriotism commands only a measure of popular respect, this state of mind is to be charged not so much to the high crimes of that body as to its misdemeanors; not so much to its transcendental failures as to its minor follies, its montebankery, its moral cowardice. Senators and Congressmen alike invite public reproach, session after session, for example, for the deliberate falsification of the official record of Congressional proceedings; for the shameless increase in their pay through the excessive mileage which they allow themselves; for further raids upon the Treasury by the employment of wives, sons, and daughters; for the seed graft, which was practiced for many years; for the endless junketing at public expense; and for the logrolling methods of transacting public business whereby pork appropriations are systematically parcelled out. On the score of personal integrity, on the other hand,—and there is reassurance in the fact—Congress challenges comparison with any average body of citizens, notwithstanding the temptations which daily beset the national legislators. Bribery, for instance, is so rare and so perilous that in the past fifteen years exactly one member has been found guilty of selling his vote for money.

J. FREDERICK ESSARY.

Washington, D. C.

NOTES ON ADMINISTRATION

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National, State, and Local Coöperation in Food and Drug Control. When President Coolidge authorized the appointment of state and local government officials to coöperate with national officers in the enforcement of prohibition, he had a large body of veteran enforcement personnel from which to select his potential coöperators. For all of the American states and several of the cities had long maintained some agency for the enforcement of pure food and drug laws or kindred statutes aiming to protect the public against intrastate traffic in misbranded and adulterated commodities. Since 1906 they had worked with the bureau of chemistry of the United States Department of Agriculture in applying the kindred national act to interstate commerce. Then in 1927, the year following President Coolidge's prohibition executive order, there was created a national food, drug, and insecticide administration in the same department. Through its office of coöperation was formed a federated supervision of the production and distribution of foods, each organization acting within its own limited legal jurisdiction: the states inspecting factories and intrastate trade; the cities scrutinizing markets and local deliveries to the consumer's home; and the national government watching over the interstate and foreign shipments.¹

¹ The jurisdiction of the national and state governments with regard to pure food and drugs legislation has been a subject for judicial consideration. National authority over interstate commerce is comprehensive under Art. 1, Sec. 8, of the Constitution, which empowers Congress "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." But the states exercise supreme authority over manufacturing and intrastate commerce, and they may even supplement Congressional statutes, provided they do not interfere with interstate commerce. In the case of *Weigle v. Curtice Brothers Company*, 248 U. S. 285, 288 (1919), the Court held that "the fact that a food or drug might be condemned by Congress if it passed from state to state, does not carry an immunity of foods or drugs, making the same passage, that it does not condemn. . . . When objects of commerce get within the sphere of state legislation the state may exercise its independent judgment and prohibit what Congress did not see fit to forbid." Other discussions are presented in *Savage v. Jones*, state chemist of Indiana, 225 U. S. 501 (1912); *McDermott v. State of Wisconsin*, 228 U. S. 115 (1913); *Corn Products Refining Company v. Eddy et*

General Survey. Many of the statutes which the states enforce apply to subjects sufficiently various to warrant dual or triple classifications. Prohibitions of the sale of very young veal, for instance, might be classed as dietary or as humane restrictions. Sanitation in slaughterhouses located in thickly populated residential districts might be required as a means of insuring wholesome meats for the protection of local community health, or as a means of preventing the depreciation of adjacent real estate. Many acts touch feeding stuffs for cattle; also beverages, oils, gasoline, chemicals, and even fertilizers. Weights and measures of products in trade are included in some provisions.

Agencies have been created in some of the commonwealths for the special purpose of enforcing food and drugs acts, while others are charged with several duties; some are composed of one person, others of a staff; some are quasi-independent units, others are attached to a major executive department, usually the state board of health or the department of agriculture where chemical laboratories are available. Collectively, therefore, they include a variety of technical appellations: the Connecticut dairy and food commissioner; the North Carolina state food and oil chemist; the Tennessee division of foods, fertilizers, and dairies in the department of agriculture; the Idaho department of public welfare; the Nevada food and drug commissioner in the public service department of the University of Nevada; the California bureau of foods and drugs under the state board of health. In some states the duties are distributed over two or more separate agencies such as the New York dairy and food bureau in the department of farms and markets, and the state board of pharmacy; the Kentucky bureau of foods, drugs, and hotels under the state board of health at Louisville, and the department of feeding stuffs of the agricultural experiment station at Lexington; the Michigan bureau of foods and standards, and the board of dairying in the department of agriculture, and the director of drugs and drug stores under the state board of pharmacy.

Early food and drugs laws seem to have evolved as applications of expanding police powers and as necessary factors in public health administration. They lend themselves to such wide interpretations, and the principles of their relations to public health administration begin so near the primordial, that caution counsels reservation in assign-

al., 249 U. S. 427 (1919); State of Minnesota on the relation of Whipple v. Martinson, 256 U. S. 41 (1921); and Lynch v. Tilden Produce Company, 265 U. S. 315 (1924).

ing any exact dates for their sporadic origins. According to Dr. Alexander Wynter Blyth, who essayed the history of food adulteration, ancient regulations were comprehensive.² He recalls that Pliny alludes to the fraudulent practices of bakers in adulterating bread with white earth obtained from a hill near ancient Naples. In Athens a special inspector was required to detect and suppress the adulteration of wine. "In Europe generally, from the eleventh century onwards, the bakers, the brewers, the 'pepperers,' and the vintners were most frequently accused of corrupt practices." Mediaeval Germany was particularly severe in its punishment of persons guilty of adulterating foods, wines, and drugs. In 1276 the guilds at Augsburg expelled a false butcher. In Nuremberg nearly all food and drugs products were regularly inspected by such functionaries as the *Schau*, the *Bäckerschau*, and the *Safranschau*. A statute of Paris in 1292 prohibited the adulteration of beer; and an *ordonnance* of the provost in 1382 applied to the adulteration of flour. In England, during the fourth year of the reign of King John, the sale of bread was regulated by the Assize of Bread of 1203, which remained in force until 1286. While this did not directly regulate the adulteration of bread, it indirectly led to the Assize of 1582 which provided punishment for them "that by false meanes useth to sell meale," and for "bouchers that sell mesell pork or mozen flesche," and stipulated that "thus ought other transgressors to be punished, as cooks, forestallers, regrators of the markets when the cookes serve, roste, bake, or any otherwyse dresse, fysche or flesche unwholesome for man's body."

The difficulty in tracing the American beginnings of pure food and drugs regulation is not obviated by recalling the old common law rule which construed the offering of food for sale to imply a guarantee that the food was pure. Defining the terms liberally, however, it is certain that some form of food and drug legislation had been enacted in every state and territory prior to the enactment of the national food and drugs act of June 30, 1906, which was intended to prevent "the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors" in the territories, and at least to regulate traffic in them in interstate

² *Foods; Their Composition and Analysis* (London 1882), pp. 4-16. Cf. W. A. Brend, *Health and the State* (1917); K. R. Greenfield, *Sumptuary Law in Nuremberg* (1918); F. E. Baldwin, *Sumptuary Legislation and Personal Regulation in England* (1926); and G. A. Weber, *The Food, Drug, and Insecticide Administration* (1928).

commerce, the statute being more comprehensive than the national act of June 26, 1848, which was designed merely "to prevent the importation of adulterated and spurious drugs and medicines."³ Twenty-one states modified their statutes during the first year of the 1906 national act.⁴ In 1909 appeared the *American Pure Food and Drug Journal*, "devoted to the enforcement of the national and state pure food and drug laws." General regulatory development in the states at large continued after the World War.

Legislative and Administrative Developments. While Florida enacted a packing law as early as 1832, the first bona fide state pure food and drugs act *per se* seems to have been the Virginia statute of 1847, which decreed imprisonment and fine for "any free person who shall knowingly sell any kind of diseased, corrupted, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer," or "who shall fraudulently adulterate, for the purpose of sale, any drug or medicine, in such manner as to render the same injurious to health." Another clause applied to "any substance intended for food, or any wine, spirits, malt liquor, or other liquor intended for drinking."⁵ Both drugs and liquor were to be "forfeited and destroyed," as under the national act of 1906. Virginia's example was followed, in a measure, by Wisconsin in 1849, Iowa in 1851, Ohio in 1853, New Mexico in 1854, Rhode Island in 1857, Pennsylvania in 1860, and New Jersey in 1865.⁶

³ 34 Stat. L., 768; 9 Stat. L., 237.

⁴ They were: Arkansas, California, Colorado, Connecticut, Delaware, Florida, Iowa, Illinois, Indiana, Kansas, Missouri, New Hampshire, New Jersey, North Carolina, South Carolina, Tennessee, Texas, Utah, Washington, West Virginia, and Wisconsin.

⁵ Acts of the General Assembly (1847-48), p. 112.

⁶ The following dates of pure food and drugs acts in the several states may not be entirely exhaustive, but their chronological arrangement will indicate the gradual development of such legislation in each commonwealth and in the country at large:

Florida, 1832 (packing law), 1889, 1907, '11, '13;

Virginia, 1847, 1889-90, '91, '93-'94, '97, 1908;

West Virginia (1847), 1882, '85, '91, 1907;

Wisconsin, 1849, '58, '87, '89, '91, '93, '95, '97, '98, '99, 1903, '05, '07, '09, '11, '13, '21;

Iowa, 1851, '80, '86, '88, '97, 1907, '11, '13, '15, '19, '23 (inspection of eating places);

Ohio, 1853 (labeling of poisons), 1865 (wines), 1882, '84, '85, '86, '87, '89, '90, '91, '94, '96, 1919;

New Mexico, 1854, '65, '89;

That the states should precede the national government in thus applying its police power was apparently as logical as is the residuum of that power in the states. That the Congress should assist the states beyond their jurisdictions was as inevitable as is the necessity of a

Rhode Island, 1857, '96, 1908, '09, '15, '16, '17, '18, '19;
 Pennsylvania, 1860, '78, '85, '87, '91, '93, '95, '97, '99, 1901, '03, '07, '17, '23;
 New Jersey, 1865, '81, '82, '83, '85, '86, '87, '95, '96, '99, 1901, '07;
 Kentucky, 1868, '70, '93, '98, 1900, '18;
 Wyoming, 1869, 1905, '11, '13, '15, '20, '21;
 Michigan, 1871, '73, '75, '81, '87, '89, '93, '95, '97, '99, 1903, '05, '09, '11, '15, '23;
 Alaska, 1900 (code);
 Illinois, 1874, '77, '79, '81, '83, '85, '87, '89, '97, '99, 1901, '07, '15, '17, '19, '21;
 Kansas, 1874, '85, '89, '91, '97, 1901, '07, '09, '13;
 Utah, 1876, '88, '96, '99, 1903, '07, '13, '19;
 Louisiana, 1880, '82, '86, '98, 1906, 1914;
 Mississippi, 1880, 1910, '18;
 Minnesota, 1881, '86, '87, '91, '95, '97, '99, 1901, '05, '13, '21;
 Massachusetts, 1882, '85, '86, '87, '89, '91, '94, '96, 1914, '17, '19, '21 (regulation of manufacture of non-alcoholic beverages);
 Idaho, 1887, '99, 1905, '11, '17, 1921;
 Indiana, 1883, '89, '94, '99, 1901, '07;
 Maine, 1883, '89, '95, '11, '13, '19, '23;
 Nebraska, 1883, '91, '95, '97, '99, 1913, '15, '19, '21;
 Arkansas, 1885, '91, '93, 1907;
 Missouri, 1885, '89, '91, '97, 1907;
 North Dakota, 1885, '95, '97, '99, '23;
 South Carolina, 1885, '96, '98, 1907, '22;
 Colorado, 1887, '93, '95, 1907, '15, '18, '21;
 Maryland, 1888, '90, 1900, '10;
 Connecticut, 1889, '93, '95, 1907, '15, '18, '21;
 Oregon, 1889, '93, '99, 1915, '17, '19, '23;
 Georgia, 1890, '91, '95, '96, 1906, '13;
 Oklahoma, 1890, '93, 1909, '15;
 Nevada, 1891, 1913, '16 (hotel inspection law), '21;
 New Hampshire, 1891, '95, '99, 1901, '07;
 Washington, 1891, '97, '99, 1901, '05, '07, '17, '21, '23;
 California, 1893, '95, '97, 1900-01, '05, '07, '09;
 New York, 1893, '94, '98, 1900, '19, '10, '23;
 Alabama, 1894-95, '96-'97, 1909, '19, '20;
 Vermont, 1894, 1904, '08, '12, '17;
 Delaware, 1895, '99, 1907, '21, '22;
 Montana, 1895, 1901, '11, '19, '25 (regulation of ice cream and cheese factories and adoption of the Babcock test);
 North Carolina, 1895, '99, 1905, '07, '09, '13, '15;
 Tennessee, 1895, '97, 1907, '09, '11, '13;
 South Dakota, 1897, '99, 1909, '13, '15, '17, '23;

federalized police power. But the causes for the development of these particular federalized institutions were numerous. A general factor was the gradual concentration of the population and the consequent complexity of economic life which placed the individual at the mercy of society and of its trade. As Governor Hooper of Tennessee reminded the legislature of 1915, "In the olden days, when every family produced its own foods and compounded its own homely medical remedies, a man could feel a great degree of complacent assurance as to what was entering his stomach. Under modern conditions, a majority of the people must trust for the wholesomeness of their foods and medicines altogether to the honesty and capability of men they have never seen. It is perfectly evident that the strictest regulation and supervision will be continuously necessary to prevent dishonest and inefficient men from destroying the lives and health of the human race by deleterious drugs and foods." More specifically, the reasons for this state regulation included: the increased number of eating-places managed by unscrupulous persons; the development of meat-packing and cold-storage customs; the anti-narcotic laws; state-wide prohibition of intoxicating liquors by state agencies in thirty-three states and the subsequent investigation of non-alcoholic beverages; the increased consumption of confections and of dairy products consequent upon the prohibition of liquor; the multiplied uses of oils and gasolines for

Texas, 1897, '99, 1907, '09, '11 (food and drug commissioner charged with enforcement of anti-narcotic law);

Hawaii, 1898;

Arizona, 1901, '12, '18.

Elaborate details pertaining to food and drug legislation in the states and in foreign countries prior to 1901 is presented in Senate Report No. 3, 57 Cong., 1 Sess., 1902. Tabulated data pertaining to adulterated commodities and investigators' reports are exhibited in Hearings before the House Committee on Interstate and Foreign Commerce, 57 Cong., 1 Sess., 1902. Later volumes of legal data include W. C. Breed, *Digest of State Laws* (1907), and Breed, Abbott, and Morgan, *Digest of National and State Food Laws* (1916). J. Westervelt, *American Pure Food and Drug Laws*, contains administrative rules and regulations and voluminous citations of decisions. C. W. Dunn's pure food and drug legal manual includes food standards and inspection decisions. J. S. Abbott and W. C. Burnet, *Manual of Procedure for the Guidance of City and State Health, Food, and Drug Officials*, is of technical value. The 1924 compilation of federal and state acts pertaining to this subject includes Canadian laws. W. Robertson and M. Herzog, *Meat and Food Inspection*, presents extracts of English acts. An excellent general treatise, W. W. Thornton, *The Law of Pure Food and Drugs*, is rich in footnote citations of state court decisions.

domestic purposes as well as for automobiles; the enforcement of laws dealing with weights and measures; the results of experiments in household chemistry at the state agricultural experiment stations and the popularization of the findings through college extension courses; multiplied shipments of perishable products; the increased interest in the food problem during the World War with the advent of food administration organizations; and the expansion of international trade in food products after the World War.

The national control of commodities in interstate and foreign commerce naturally was related to that of the states in intrastate commerce, especially after the United States bureau of chemistry established laboratories in sixteen cities throughout the New England, Central Atlantic, and South Central states. Just as the first decade of the national act of 1906 was marked by significant improvements in state administrative machinery for the enforcement of local pure food and drug laws, so the second decade was distinguished by developments, especially in Michigan, North Dakota, and other western states. For example, the Michigan legislature of 1917 created the office of food and drug commissioner and transferred to it the powers of the former office of dairy and food commissioner. It was stipulated that the commissioner should be a citizen of Michigan, appointed by the governor by and with the advice and consent of the senate for a term of four years unless sooner removed by the governor. His annual salary was fixed at \$3,500 and his bond at \$10,000. Some variation from this plan was adopted by the North Dakota legislature of 1923, when it created the office of state food commissioner and chemist, and stipulated that its directing head should be appointed, not by the governor, but by the governing body of the North Dakota Agricultural College, which was the state board of administration. Subject to removal for cause by this appointing power, and without appeal from its action, he was to serve for a two-year term at a salary of \$4,000 a year and under a \$10,000 bond which was rendered payable out of the state regulatory fund. Staffs of assistants were provided for these two commissioners and were placed largely under their centralized control. Michigan permitted the commissioner to appoint, subject to the approval of the governor, a deputy, an analyst, some inspectors and investigators, and authorized the coordinated aid of the attorney-general and all of the prosecuting attorneys, sheriffs, and police officers. North Dakota authorized its commissioner to make similar appointments with the approval of the state board of administration, and to

provide laboratories and other facilities necessary for the enforcement of the laws.

The Michigan commissioner was required to supervise the enforcement of all the state statutes relating to weights and measures as well as to traffic in foods, drugs, and liquors. Powers to execute these duties were plenary, including those of a sheriff in making arrests. The North Dakota commissioner was charged with the enforcement of laws treating of almost as many subjects as would be represented in a compilation of all of the kindred laws in all of the states: foods, drugs, soda fountains, beverages, feeding stuffs, insecticides and fungicides, fertilizers, snuff, oils, paints, varnish, false and misleading advertisements, net weights, cold storage, sanitary inspection, and hotel inspection. He was empowered to gather information concerning articles, and to publish the analyses of products in much the same manner as were the results of agricultural experiments at the state experiment station. His administrative discretion extended to minute details of procedure. Both he and his agents were granted access to all places of business, whether factories, cars, or vessels. They were authorized to open packages, to prevent the manufacture or sale of goods when necessary to enforce the act, and to require a medical examination and certificate of health for workmen suspected of having communicable diseases. North Dakota municipalities were empowered to enact pure food and drug ordinances.

Compulsory sanitation in the production and distribution of food, which had made rapid progress since 1906 in such states as Iowa, Indiana, and Nebraska, continued to develop during the second decade of the national act. South Dakota emphasized its importance in 1921 by creating a sanitary inspector and by declaring that unclean surroundings of food businesses should constitute a nuisance. During the same year, Wyoming authorized its dairy, food, and oil commissioner to close any unsanitary place that was used for manufacture or traffic in foods. This was to be done whenever it seemed desirable to him or his agents, and without even a formal warrant. Likewise, the Oregon dairy and food commissioner was empowered in 1923 to seize milk and ice cream containers when they were not properly sterilized after being used for other substances.

Administrative Legislation. Administrative powers so extensive required a corresponding amount of ordinance power in the form of both subordinate legislation and subordinate adjudication—power to issue orders and regulations, to grant hearings, and to render *ex parte*

decisions. By 1916 administrators of nearly every state had ordinance power sufficient to issue rules and regulations pertaining to foods and drugs, and the constitutional question as to whether they had come by this authority through a delegation of the legislative power had been answered negatively in numerous court decisions. Legislative attitude toward the question is illustrated by the North Dakota act of 1923, which required the commissioner to complement the statutes with such detailed provisions as should be necessary "to fix, adopt, publish and enforce definitions, rules, regulations and standards of quality, purity, and strength of articles of food and drugs for which no definition" is prescribed by law. This power promised to expand with the increase in chemical discoveries. The World War had already rendered inevitable some modification of the United States *Pharmacopæia* which had appeared in 1916 for the first time since the national act of 1906. Again, the Wisconsin commissioner was given the ordinance power in 1922 to declare that a "license to operate a cold storage warehouse will be granted by the dairy and food commissioner for a period of one year only, after an examination of the warehouse has been made and it has been found to be in a proper sanitary condition and otherwise properly equipped for its intended use. No person having any communicable or contagious disease shall be employed in any capacity in a cold storage warehouse." In 1924 the Indiana state board of health adopted rules to govern the manufacture and dispensation of soft drinks on fair grounds, in parks, and on highways.

Administrative Adjudication. By 1916 administrative adjudication of food and drugs cases was well developed in every commonwealth. Hearings before enforcement officers had been authorized in the majority of the states, but the statutes of eighteen states lacked specific provision for them.⁷ The legislatures in these latter cases probably presumed that the hearings were unnecessary because unwholesome food not only may be destroyed by the state or municipal authorities, but it may be destroyed, if the statute or ordinance so provides, "without notice or hearing given to the owner."⁸ The case of *Deems v. Baltimore* held, however, that "to justify such interference with private rights, the exercise must have for its immediate object the preservation of the public good, and, so far as may be practicable,

⁷ They were: Idaho, Indiana, Iowa, Kansas, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Pennsylvania, South Carolina, Texas, Utah, Vermont, West Virginia, and Wisconsin.

⁸ W. W. Thornton, *The Law of Pure Food and Drugs*, p. 88.

every effort should be made to adjust the conflicting rights of the public and the private rights of individuals,"⁹ so as not to violate the Fourteenth Amendment to the national Constitution. Accordingly, the South Dakota act of 1915 specified that when a person was charged with violating the food and drugs acts, and ordered to respond to the charge, he should "have the right to appear in person or by attorney before the state food and drug commissioner or the person appointed by him for such purpose within the time specified in the order, and shall be given an opportunity to be heard and show cause why such order or instructions should not be obeyed. Such hearings shall be under such rules and regulations as may be prescribed by the state food and drug commissioner. If after such hearing it shall appear that the provisions of this act have not been violated, said order shall be rescinded."

Administrative Activities. The food and drug agencies in some commonwealths apparently became sufficiently manned to enforce the laws without auxiliary aid, but most of them continued to coöperate with allied services of the state, with the local governments, with neighboring states, or with the United States bureau of chemistry. In Pennsylvania, Governor John K. Tener advised the 1915 legislature that the "Pennsylvania pure food laws are probably the best in this country. They are enforced vigorously and efficiently. It is the duty of a state to see to it that measures are enacted for securing and maintaining a pure and wholesome food supply, to facilitate its distribution, to safeguard its quality, and to prohibit absolutely any and every adulteration of food and drink." Reports of commissioners in other states have indicated the gradual development of strong state agencies which have been able not only to secure arrests but to procure sufficient evidence against accused persons to insure their conviction. In 1898 the Michigan commission developed 53 cases, but procured only 8 convictions. Five years later they again had 53 cases and procured 32 convictions; but twenty years later they convicted one hundred per cent of their cases. Most of these cases were for violation of the dairy laws—the selling of adulterated milk and the like. The latter cases were instituted by the inspector of the agricultural department, and they do not include the cases handled by the county and city milk inspectors.¹⁰ The Minnesota agency¹¹ in 1922

⁹ 80 Maryland 164, cited in *ibid.*

¹⁰ Annual Report of the Michigan Bureau of Dairying (1923), p. 31.

visited, at least once, all of the towns in the state having a population of 200 inhabitants. Altogether, 878 towns were visited, 279 mills were inspected, as were 1,865 stores and warehouses. Much feed was removed from sale.¹¹ During the first twelve years of the Oregon commission, 17,882 specimens were examined and analyzed. Food laboratories were established in the Oregon Agricultural College and in Portland, making possible the examination of more than four thousand samples in one year. In 1923 they gave great attention to narcotics and beverages, examining 320 samples of the former and twice as many of the latter, as well as 61 specimens of ice cream. Their inspection of dairies, grocery stores, confectioneries, soda fountains, slaughter houses, and meat markets totalled 9,803 and was followed by 495 prosecutions and \$9,450 in fines. The name of each prosecuted delinquent was published in the annual report.¹²

Coöperation with allied officers of the state is illustrated in the Montana revised code of 1921, which provides that the report of the chemist at the state agricultural college condemning food "shall be taken as presumptive evidence of the impurity of such drug or article of food." The state police are regarded as food law enforcement officers, especially in New Jersey.

Coöperation with County and Municipal Governments. In the enforcement of pure food and drug laws coöperation with county and city governments was practiced widely after Congress passed the Smith-Lever Coöperative Agricultural Extension Act of May 8, 1914,¹³ providing for agricultural agents and home economics demonstrators in all counties complying with the terms of the law. Home demonstrators were later provided for urban communities as well as rural, under the federated supervision of the national, state, and county governments. While these officers were not directly connected with the enforcement of the food and drugs acts, they advanced the same purpose. It was the duty of the county agents to instruct the farmers concerning the purity of fertilizers, the sanitation of fruit packing, and the uses of dairy products. Likewise, the home demonstration agents taught the chemistry of foods and the domestic sciences in general. Furthermore, some of the state food and drugs officers resorted to the methods of

¹¹ Fourth Annual Report of the Division of Feed Inspection, Minnesota State Dairy and Food Commission (1922), p. 31.

¹² Fourteenth Biennial Report of the Dairy and Food Commission of the State of Oregon (1923).

¹³ 38 Stat. L., 372.

the extension agents in protecting the public against bad commodities. The need of such coöperation has been stressed by both state and national administrators. Governor Dunne of Illinois informed the 1915 legislature that "with only eighteen inspectors to cover the entire state, it is obvious that this department can accomplish its purpose only with intelligent coöperation from municipal and county officers and from the general public. . . ." Realizing this, the state food commissioner has devoted particular attention to enlisting the assistance of local officers, obtaining the enactment of municipal ordinances for the protection of the food and milk supply of cities, and to a campaign of lectures and newspaper publicity for the purpose of instructing the public in the provisions of the law and methods of insuring its enforcement. Moving picture exhibitions have been used with good results, and the volunteer assistance of newspapers throughout the state has been of great value in this campaign."

Coördination of state and local enforcement activities may easily be resolved to problems of personnel administration. This was emphasized at the convention of the Association of American Dairy, Food, and Drug Officials in 1918, when it was declared that "real coördinated effort can be accomplished only by eliminating politics in the appointment of inspectors, as efficiency is out of the question so long as a change of administration affects the positions of the workers. Civil service rules should be strictly enforced in selecting inspectors, and if any political pressure is brought to bear upon the appointment of a person to any official position in the inspection service, such a person should be barred from holding office, regardless of his qualifications."¹⁴ This is especially true where local food dealers are heavy contributors to political campaign funds, but certain city managers might prefer a greater centralization of administrative responsibility to municipal civil service systems.

Nevertheless there has been reasonable cause for optimism. The Missouri commissioner appealed to the citizens of the state in 1922 for coöperation in his work. Prosecuting attorneys and sheriffs especially are desired to coöperate with the enforcement organization in some states, and the Michigan commissioner reported in 1923 that this coöperation had been excellent in his state. One of the best examples of state and local government coöperation is afforded by Oregon. In 1923 the commissioner reported that "in order to secure

¹⁴ Official Proceedings of the Twenty-Second Annual Convention of the Association of American Dairy, Food, and Drug Officials (1918), p. 165.

closer coöperation of local authorities this department has, with good results, recommended to several cities the passage of an ordinance regulating the local milk supply. A model ordinance was prepared by this department and through our deputies presented to the council in a number of towns, seven of which, with minor changes to suit local conditions, have adopted it. Almost without exception, where our deputies have been able to meet with the city council and explain the object of the proposed ordinance and its practical workings they have accepted and passed it. This work has brought these towns and cities into closer touch with, and greater appreciation of, the work of this department and has established closer coöperation that is mutually beneficial. In most cases a local inspector is appointed who is in a position to make an inspection any day at a moment's notice. This continuous overshadowing presence of an official has a very salutary effect upon the dairyman who might otherwise have a tendency to be a little slack in his methods."¹⁴ The Oregon commissioner announced in 1923 that "while milk and cream constitute the larger portion of these specimens, they include every kind of food products as well as a wide range of other specimens. Among these, alcoholic liquors and narcotics are quite conspicuous. These have been analyzed by our chemist in coöperation with city, state, and federal officials in the enforcement of the prohibition and the Harrison anti-narcotic laws, it being the policy of the office to render state-wide service as far as practicable."

In 1923 a survey of municipal health department practice in eighty-three cities was completed under the auspices of the American Public Health Association, in coöperation with the United States public health service. Municipal food and drugs inspectors received thorough scrutiny by Professor Ira V. Hiscock, who concluded that: "1. Food inspection is an essential function of the municipal health department and is universally accepted as such. As a rule, the work is under the direction of a full-time official (52 out of 65 cities) or of the health officer himself (4 cities) and is frequently combined with the supervision of the milk supply (35 cities). 2. The staff consists of veterinarians and inspectors, about one veterinarian per 50,000 population and about two inspectors per 100,000 population. About one-third of the former and one-sixth of the latter are on part time. 3. The cost of food inspections in 33 cities averages about 5½ cents per capita.

¹⁴ Biennial Report of the Dairy and Food Commissioner of the State of Oregon (1923), pp. 7-8.

4. Most cities require permits or licences for certain classes of places where food is handled, slaughter houses, markets, bakeries, restaurants, hotels, candy stores, soda fountains, groceries, and fruit stands being most commonly licensed, in the order named. 5. All of the above types of establishments are inspected in 47 cities. About 4,400 inspections of premises per year are made per 100,000 population, the large cities showing a much lower and the small cities a much higher figure. Scoring is practiced in only a quarter to a half of the cities which inspect a given type of premises. About half of the large cities have special regulations for the sterilization of utensils. 6. It is usually found that all slaughter houses not federally inspected are inspected by the health department, but records of carcass inspections are seldom kept. For three cities presenting this information the numbers are from two to seven times as high as for all other food inspections. 7. The number of food handlers in 35 cities averages about 25 per 100,000 population. Thirty-seven out of 81 cities have regulations for the medical examination of food handlers and 22 cities report definite figures for 1920. Of these cities, five made no examinations and two only a small number. In the other 15 cities reporting, 500 examinations were made—on the average, 63 examinations per 100 food handlers. The development of the work in these 15 cities is highly creditable, and other departments would do well to imitate them. 8. Only nine cities exert direct administrative control over the drug problem. This is a line of health department work which should be substantially extended along the lines worked out in New York and Cleveland.”¹⁶

Coöperation with the National Government. Between the states and the national government, coöperation was as inevitable as was that of the states with their municipalities. Obviously it was due to the universality of the problem and to the limited jurisdiction of the states with regard to interstate commerce and of the national government with regard to intrastate business. To insure greater coördination in the work of the national and state enforcement administrators, a central federal organization was proposed at a meeting of state and

¹⁶ Report of the Committee on Municipal Health Department Practice of the American Public Health Association, in Coöperation with the United States Public Health Service, U. S. Public Health Bulletin No. 196, pp. 190-191. Cf. Dr. C. V. Chapin, Report on State Public Health Work, made under the direction of the Council on Health and Public Instruction of the American Medical Association (1915). Pp. 80-96 treat of local health administration and the state.

federal food and drug officials in 1913. During the following year—in which the Smith-Lever Coöperative Agricultural Extension Act also was passed—there was created in the bureau of chemistry an office of coöperation, which in 1927 was incorporated in the Food, Drugs, and Insecticide Administration. Furthermore, in 1916, the Association of American Dairy, Food, and Drug Officials resolved “that both state and federal food and drug officials of this Association unite in the formation of smaller associations on a basis of community interests to study ways and means of handling local problems, and that their conferences be entirely of an executive nature.”¹⁷ Subsequently, such organizations were founded by officials in the New England, Central, North Central, Central Atlantic, South Central, Western, and Southeastern states. Director W. S. Frisbie of the Office of Coöperation has said that these sectional organizations were “really instrumental in promoting coöperation and coördination, since by means of these associations has it been possible to secure the adoption over wide sections of the country of uniform regulations for enforcing food and drug laws.”

The general activities of the Office of Coöperation early included the collection of statutes, regulations, definitions, and standards of the several states and foreign countries; publication of a manual of procedure for the guidance of state health, food, and drug officials; publication of lists of federal and state dairy, food, drug, and feeding-stuffs officials, with current revisions; publication of the *Food and Drug Review*, containing “reports for the sole use of federal, state and municipal officials in the regulation of commerce in foods and drugs;”¹⁸ correspondence and conferences with state and municipal officers; notification of the beginning and termination of court decisions and of public hearings of the bureau of chemistry; furnishing of analyses and of inspection reports; presentations of methods of analysis; collection of state administrative reports and publications.

In this way the office keeps in direct contact with fifty departments, including those of the District of Columbia, the Philippines, and the territories of Hawaii and Porto Rico.¹⁹ Consequently, several municipal and state officers secure evidences with which the national act may

¹⁷ Annual Report of Department of Agriculture (1917), p. 207.

¹⁸ Notice is served that “information appearing in the *Food and Drug Review* is confidential. Readers are requested not to make public anything from the *Review* without first obtaining permission from the bureau of chemistry.”

¹⁹ U. S. Department of Agriculture Circular 137 (1924), p. 15.

be more efficiently enforced. "Federal officials, in turn, notify city and state officials of violations of city ordinances and state laws relating to foods and drugs."²⁰ An example of state aid to national officers is afforded by Minnesota in 1922. The Minnesota state inspectors were "authorized to collect samples from interstate shipments of feeds when considered advisable. When such samples are collected they will be forwarded to the nearest government laboratory for whatever action the federal authorities deem advisable."²¹ Also, the Oregon commissioner had occasion to report in 1923 that "agents of the federal department often find it necessary to call upon this office for assistance in prosecuting cases not completely covered by federal law. So the local representative of the federal department and this office have established close relationship and are in constant communication and coöperation. This relationship has proved very satisfactory and mutually beneficial to all parties concerned."²²

Conversely, the national government has aided the local administrators in some emergencies. One of the most amazing instances was the investigation of poisoning outbreaks in 1924. "Immediately upon the conclusion of the investigation of the bureau of chemistry, which proved that the fatalities in Wyoming had been caused by canned ripe olives, letters were sent to every state official charged with the enforcement of regulatory food laws, and to similar officials in the larger cities, advising them of the results of this investigation and, in view of the great danger to the public, requesting their assistance in surveying immediately, so far as practicable, all stocks of ripe olives in the hands of jobbers, wholesalers, and retail dealers and removing all packages which were in any respect suspicious. Supplementing these letters, the field stations of the bureau of chemistry addressed similar requests to the health officials of many cities, large and small, within their territories. The response to these requests was immediate, and the bureau was very soon receiving samples of olives from every section of the United States. These were examined and reported upon as fast as possible."²³

²⁰ Program of Work of the United States Department of Agriculture for the Fiscal Year 1919, p. 315.

²¹ Fourth Annual Report of the Division of Feed Inspection, Minnesota State Dairy and Food Commission (1922), p. 31.

²² Biennial Report of the Dairy and Food Commissioner of the State of Oregon (1923), p. 7.

²³ Annual Report of the Chemist, Department of Agriculture (1924), p. 25.

This system of federated enforcement activity has been quite as satisfactory to the officials of the national government as to those of the states. The bureau of chemistry reported in 1920 that officials of thirty-two states had instituted actions for violations of the federal food and drugs act which resulted in 81 prosecutions and 174 seizures. Municipal officials of five cities instituted 61 prosecutions and 17 seizures during the same period.²⁴ Two years later he asserted that "very satisfactory reports have been received from the field forces as to the coöperation being received from the various state and city departments, and especially from several states and cities where heretofore coöperation had been relatively undeveloped."²⁵

"In spite of all that has been secured," says Director W. S. Frisbie of the Office of Coöperation, "there is still room for improvement, and this improvement will come as a result of greater coördination and simplified administrative procedure." The inspections must keep pace with the newer inventions and food compositions. There is need for greater coöperation of the local governments with each other and with the national Office of Coöperation in the Food, Drug, and Insecticide Administration. Perhaps there might be more coöperation between the educational forces of the Department of Agriculture and the regulatory officers. For instance, it might be that the county agricultural agents and the home demonstration agents of the Extension Service could conduct popular educational campaigns that would result in greater assistance to the Food, Drug and Insecticide Administration from local governments, civic societies, business associations, and individual citizens. And possibly politics could be further eliminated from the state and local enforcement agencies. Uniform state legislation is essential, with a corresponding unification of rules, regulations, standards, and decisions. Expeditious methods for the interstate extradition of criminals are needed. Official statements concerning this growing problem of law enforcement offer no alternatives for its complete solution. Referring to the national act, one federal administrator testified in a Congressional hearing in 1923, that "the enforcement of this law is getting more difficult and more expensive every year. That is naturally to be expected. The conditions with which we are confronted at the present time in its enforcement are quite different from those that obtained originally. The forms of sophistication that exist now are more subtle and more devious than those that were originally en-

²⁴ Annual Report of the Department of Agriculture (1920), pp. 264-265.

²⁵ *Ibid.* (1922), p. 276.

countered. The enforcement of the law does not involve the simple mechanical operation of going out and collecting a sample and showing that it had been shipped in interstate commerce and in making a simple examination to prove that the product claimed to be in that package was not that product at all. Proper enforcement now requires thorough study to determine methods which can be employed by the laboratories engaged in the simpler form of work, for the purpose of identifying the type of adulteration that has taken place."²⁶

In a previous hearing in 1916, Dr. C. L. Alsberg, chief of the bureau of chemistry, urged unification of both state legislation and administration. He testified that in some instances "two neighboring states had practically identical or very similar laws; yet the administration of these laws in the two states has been so different that they might for all practical purposes have been different laws."

Uniformity of state legislation pertaining to food and drug matters is not a new proposal. In 1899 the National Pure Food and Drug Congress expressed itself upon the subject thus: "All that is desirable and all that can reasonably be expected is that there should be a substantial agreement upon the fundamental principles of food and drug legislation, especially as regards the standards of purity which should be exacted, and upon the methods of labeling the substances which come within the purview of the statutes, in order that manufacturers and producers may not be put to the unnecessary trouble and expense of preparing a different quality of goods or a different form of label for every state into which they may be transported for sale. . . . Since each state must legislate independently, the only hope of securing uniformity lies in persuading the states to legislate in unison. Unison of legislation must be the result of unison of sentiment, and this can be secured only by general and widespread education upon the subject, in order that those who are charged with the enactment of such laws may be familiar with the form of statute best adapted to accomplish its purpose."²⁷ Two decades later this had been realized perceptibly.

Furthermore, the problem of uniform legislation was made a major study by the Association of Dairy, Food, and Drug Officials in 1921, and by 1927 Director W. S. Frisbie of the Office of Coöperation was able to say that there had been prepared a uniform act which had been passed by the executive committee of the Association and had been

²⁶ House Hearings on the Agricultural Appropriation Bill for 1924, p. 262.

²⁷ Report of Proceedings of the Second Annual Convention of the National Pure Food and Drug Congress (1899), pp. 32-33.

given to the members for further study. Without being adopted by the Association as a whole, the essentials of this proposed act had become law in Alabama and North Dakota. In addition, Dr. Frisbie reported that "uniform rules and regulations, that is, general regulations governing food and drug administration, have been adopted in at least three of the sectional associations." Accordingly, uniform state food and drug laws should promise economy and efficiency in the production of commodities and in the administration of the law, and a corresponding reduction in the legitimate retail price to the consumer. The equation of legislation and administration, therefore, might be reduced to the lowest terms of economic and of social science.

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Evaluating State Administrative Structure—the Fallacy of the Statistical Approach. Throughout past times, and even today, political science has been embodied chiefly in philosophical treatises consisting of systems of principles reasoned from undemonstrated political postulates. The study of politics has been endowed with but one earmark of science—a descriptive catalogue of schemes of governmental structure, a catalogue that continually demands addenda and revision. Within the past decade, however, certain political scientists have embarked upon an exploratory expedition into the still uncharted waters of political statistics. They hope by the adoption of an objective, statistical approach to governmental problems to make the study of politics truly and completely scientific.

This new movement has interested the writer. Two years ago he was a firm exponent of the use of statistics in political science. If statistics can be employed to analyze the fluctuations of interest rates or the frequency distribution of cancer deaths, why can they not be adapted to an examination of problems that confront the student of political life? At that time the writer began a study of the movement for the reorganization of the administrative branch of state governments. The exponents of this movement claim that consolidation and simplification of state administrative agencies produce well-nigh miraculous results in increased efficiency and economy. Surely, reasoned the writer, there ought to be some objective and statistical method of demonstrating or disproving such a proposition. He, therefore, endeavored to make an objective evaluation of state administrative reorganization. Two years' study of this problem has indicated inherent weaknesses in sta-

tistical approaches to an evaluation of the movement. The lessons as to the shortcomings of statistics in the study of administrative reorganization are applicable to many other branches of public administration.

An evaluative study of the effects of state administrative reorganization centers, in the main, about two questions. Has the new mechanism of administration produced increased economy or efficiency? And has this movement brought better men into public office? Our judgment on administrative reorganization depends upon the answers to these questions. Statistics, if they are at all applicable to such an analysis, must aid us in answering the queries. The various methods of evaluation employed by the writer will be outlined, together with the difficulties encountered in such an effort.

The first attempt to apply statistical methods to the problem of evaluating administrative reorganization was an analysis of the expenditure trends for the several states that have enacted administrative reorganization legislation. It was desired to examine these trends in order to discover whether or not there had occurred any break in tendency upon the inauguration of the new administrative structure. In some cases three immediate obstacles blocked all further study. In the first place, financial statistics were frequently non-existent; in the second place, upon the adoption of administrative consolidation and centralized fiscal supervision the methods of reporting administrative expenditures and activities usually changed; and in the third place, the lack of standardized reporting invalidated any desired comparisons of expenditure trends among the several states. In a few instances these obstacles were surmounted.

The problem, however, was not yet solved. Three irrelevant factors demanded elimination before a study of the changes in trend due to the introduction of the altered administrative structure could be begun: the expansion and contraction of state activities, the increase of government salaries, and the changing value of the dollar for state purchases. These difficulties exist in normal times, but their elimination was made especially difficult by the tangled problems of finance arising out of the World War. The exigencies of war financing caused the states to co-operate with the federal government in postponing all non-essential public improvements. As a consequence, after the armistice the state governments found themselves face to face with the problems of overcrowded hospitals and institutions, insufficient office buildings, and inadequate and worn-out highways. To catch up with their neglected work and to care for the needs of an increasing population, the states

embarked on tremendous building programs. For the five-year period beginning in 1919 we find the same jumps in governmental costs in states with and without the newer techniques of administration. As a consequence of the war and the post-war situations, the attempt to eliminate from the expenditure trends the variable of contraction and expansion of state activities resulted in immediate havoc to the entire analysis. The plan adopted was that of comparison over a period of years of the expenditures for like activities. However, the sharp contraction of state work during the World War and the huge increase in administrative activities after the armistice meant that the elimination from our analysis of all unlike activities left little of importance for comparison.

A second attempt to evaluate the economy and efficiency of administrative reorganization involved the use of index numbers for administrative activities.¹ Index numbers were compiled for the price of administrative activities for the several states; indices of actual expenditures of those states for the same years were placed in comparison. A government that is being operated economically or efficiently should demonstrate lower expenditures in relation to the price indices than a similar government operated less economically or efficiently. In this test, as in the first, we encounter the obstacles of the lack of adequate financial data and of the changing methods of reporting state expenditures and activities. In addition, serious questions can be raised as to the validity of much of the material that goes into the construction of the index numbers. A large share of the states' expenditures is consumed by salaries for the states' personnel. The problem of establishing an index number for governmental salaries based on what similar workers would be paid by private business is fraught with serious difficulties when we realize that in many cases no comparable groups of workers and administrators exist outside of the government service.

The exponents of administrative consolidation maintain that their proposal reduces the amount of overhead in administration. The writer consequently attempted to verify this contention. This problem can in a measure be studied by an examination of the ratios between the total amount expended by a state on any given function, as charities and corrections or highways, and the amount spent on supervising that activity. A comparison of such ratios existing before and after the adoption of the new administrative organization ought to reveal

¹ This analysis was suggested by Clarence Heer's *The Post-War Expansion of State Expenditures* (Institute of Public Administration, 1926).

whether any reduction in overhead costs has actually taken place. Such an examination has proved unconvincing. The ratios fluctuate from year to year; their fluctuations vary for different activities and in the several states. No definite trends are noticeable; consequently, changes in trends cannot be studied.

A brief survey of state supervising methods and problems will indicate why such an analysis of the ratios of supervising costs to total expenditures per administrative function is unfruitful. The variety of variable factors involved in administrative supervision is too great for laboratory isolation. A state appropriates large sums for the promotion of agriculture; it may expend the money itself directly, may apportion it among the counties, or may subsidize agricultural organizations. Likewise, the methods of supervision may vary. The state itself may supervise the work through agents from a central office; it may create agricultural districts and operate through district supervisors; or the state may rely for supervision entirely upon the county officials. The use of these various methods of spending the appropriations and of supervising the work performed necessarily results in different supervising costs and may, in fact, result in varying effectiveness of supervision. Single states frequently employ some or all these different methods of allotting funds and supervising work; and from year to year the emphasis placed upon any one method may change.

The comparison of supervising ratios among the several states is obviously even more difficult. The problems of administrative supervision in Rhode Island are vastly different from those in states of greater area, such as California or Texas. The problems of road building, both construction and supervising costs, in the Rocky Mountain states vary from those confronted by the prairie states of the mid-west. Nor are the social and the supervision problems in public health, labor protection, or welfare administration of industrial and urban New York in any manner comparable to those of the agricultural and rural Dakotas.

Thus far we have examined various statistical methods in an effort to learn what, if any, changes have occurred in governmental efficiency and economy as the result of the adoption of state administrative reorganization. The results proved unfavorable to the statistical approach. But suppose the tests had demonstrated positive changes; the question would still remain whether the results were traceable to administrative reorganization. Here statistics are of even less avail than in an effort to discover changes in expenditures and activities.

In medical laboratory experimentation the bacteria of disease are isolated before any attempt can be made to analyze their characteristics, causes, and consequences. In an evaluation of the changes that have been adopted in administrative reorganization codes a similar process is essential. Reorganization plans involve several important aspects—a short ballot, executive control, single-headed and functional departmentalization, central fiscal supervision, and advisory committees. Ideally, all these features should be adopted; actually, however, they have been incorporated into the reorganization legislation of the several states in widely varying degrees. No state as yet has accepted all the elements of administrative reorganization that the proponents of the movement advocate. Administrative reorganization, then, is not a single entity, but a composition of several reform plans. Can the operation of this new machinery be sufficiently dissected and split up to isolate the effects of the introduction of each of these component elements upon the efficiency and the economy of administration? How much of the increase or decrease of efficiency and economy that may be found to have taken place must be attributed to the altered administrative machinery, how much to the quality of the governmental personnel, and how much to the spirit and personality of the chief executive and his subordinates? The multiplicity of factors in reorganization plans, the difficulties in their isolation, and the presence of such non-measurable elements as personality render statistical methods useless in an effort to understand to what degree administrative reorganization legislation is a causal factor in changes of governmental economy and efficiency.

Statistics prove even less fruitful in deciding what, if any, economies in state expenditures are desirable. The question can well be raised whether decreases in expenditures, or whether reductions in supervising costs, are evidences of economy. Economy cannot be conceived merely as reductions in governmental expenditures. The purpose of administrative agencies is service—service to the people or to special groups. The notion that a government governs best when it governs least has been definitely laid aside with the assumption by the states of factory inspection, food examination, disease control, and agricultural experimentation. With the large and growing influence that administration is exercising on health and industry, the characteristic of good government becomes, not the economy of expenditures, but the adequacy of the services rendered. True, a reduced governmental personnel through more efficient methods or by the elimination of padded political posi-

tions represents real economy. Administrative consolidation may reduce some wastes from overlapping of state agencies. But the expenditure column itself carries no means of evaluating the administration; the quality of the services rendered cannot be learned through figures or decimal places. In fact, a reduction of governmental expenditures or of supervising costs, far from being cause for rejoicing, may be fraught with serious disaster.

The attempt to evaluate state administrative reorganization through any statistical analysis of state expenditures and activities has failed. The statistical approach thus cannot assist us in learning whether the new mechanism of administration has produced increased efficiency or economy. The second major object in evaluating administrative reorganization is to see whether this movement has brought into public office a better grade of administrator.

An attempt to discover statistically the changing quality of state officials involves: (1) the establishment of criteria for public administrators, (2) the examination, in the several states over a period of years, of the major administrative appointments and elections and an inquiry into the training and abilities of such appointees, and (3) the employment of statistical techniques to discover the types of administrators that the different systems of administrative organization tend to attract. Such an endeavor is, however, fruitless of results. An evaluation of this nature must in its very essence be qualitative and consequently subject to the shortcomings of subjective investigations. In the first place, the type of man that is desirable for any given administrative post is not as yet generally agreed upon by students of administration. In the second place, if any given list of characteristics were drawn up, the question whether given administrators possessed the desired qualities would still remain open to individual evaluation and prejudices. The human factor, so important in handling men or in solving administrative problems, is by far too intangible for statistical analysis. And in the third place, does the nature of the administrative machinery attract high-quality officials, or is it the spirit of the men steering the machinery that attracts able surordinates?

This last query leads into the question whether the quality of administrative officials and personnel is attributable to the new administrative organization or to the type of governor who is heading the administration. The reorganization of Ohio, with its large executive control, was employed by Governor Davis (so claim various citizens' organizations of that state) to build for himself a strong political

machine. Charges have been made that the departments of welfare, health, and highways were filled with incompetent political spoils appointees. In Ohio high-quality administrators were discouraged from entering the public service. Public health, charitable, highway, and church organizations opposed the Ohio reorganization scheme after its proposal, fought Davis's appointments, and advanced a plan to take most of the state activities out of politics and beyond the control of the governor. On the other hand, when Governor Pinchot put into operation the Pennsylvania administrative code, he endeavored to eliminate the spoilsman from office, to destroy political sinecures, and to wipe out graft. His administration succeeded in attracting to the public service men of larger caliber than had theretofore appeared upon the Pennsylvania payroll. Due undoubtedly to the quality of Pinchot's appointments and to the eradication of graft, citizens' and welfare organizations did not fight the operation of the Pennsylvania administrative code. Are the contrary results of administrative reorganization in Ohio and Pennsylvania traceable to the new political machinery or to the personality of the leaders? Could Davis's maladministration have existed on such a large scale under Ohio's previous system of administrative disintegration? Could Governor Pinchot as readily have attained his achievements under the old order of administrative decentralization in Pennsylvania?

A statistical evaluation of administrative reorganization is fraught with insurmountable obstacles. Its failure can be ascribed to four primary factors. The first three may in time be eliminated; the last will always remain to trip the investigator. These are: (1) The lack of complete and adequate financial data. Many of our commonwealths possess but meager records of the money expended and of the work performed by their administrative agencies. (2) The changing methods of state financial reporting. State finance officials have completely lacked consistency in their methods of reporting and recording expenditures. In addition, with the adoption of centralized fiscal supervision and control by some of the states, the methods of state bookkeeping have considerably altered. (3) The non-comparability of data among several states. Standardized financial and administrative reporting among those states that do possess adequate records is virtually nonexistent. The methods of recording expenditures and accomplishments vary from state to state. The utmost care is consequently essential in comparing the data of any two states, or even of a single state over a period of years. (4) The presence of numerous variable factors that render impossible any truly objective interpretation of the material

collected. These factors, especially that of human ability and qualities, cannot be isolated and reduced to comparable units. Their very existence renders any analysis of administrative efficiency or of governmental costs susceptible of more than one interpretation. Improvements may take place after the adoption of reorganization legislation. The increased efficiency, if it can be discovered and measured, may possibly be attributed to the new machinery. But, on the other hand, the changes for the better may have been accomplished by more effective leadership, by a higher grade of personnel, by improved administrative techniques, or by the elimination from the scene through external causes of perplexing administrative problems previously existent. Nor can we safely generalize from results of administrative consolidation in a department of highway construction to results for all governmental activities, or from Pennsylvania to all states that have enacted administrative codes. The problems faced by each bureau and by each commonwealth are characteristically its own; they must be subjects for individual observation. Generalization in evaluation is dangerous.

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NOTES ON JUDICIAL ORGANIZATION AND PROCEDURE

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The Judicial Council Movement. Woodrow Wilson wrote that no government is better than its courts, to which ex-President Taft replied that our judicial failure has been more outstanding than our failure in municipal government. The task of making our courts as efficient as possible is thus both an important and an urgent one.

Many factors have contributed to the present charges of inefficiency, but none perhaps of greater weight than that of delay. This has been particularly true of the larger cities, with their principal trial courts as much as two years behind in their work. The jury system, both in its expense and delays and in its freedom from control by the courts, has been a frequent source of complaint. English and Canadian writers have been telling us that their juries are generally selected in a few minutes, and that almost never does it take more than half an hour. Having impanelled the jury, the case is disposed of expeditiously, even murder cases consuming but three or four days at most. In Detroit, a murder case was called just as a judge of the Ontario High Court arrived to hold the assize court directly across the river. The Canadian judge tried nearly thirty contested cases, divided equally between criminal and civil actions, sent nine persons to the penitentiary, and adjourned court while in Detroit the jury was still incomplete.

Such comparisons are anything but complimentary to our courts and their procedure. Business has been driven to a realization that even a lean settlement is to be preferred to a law-suit. Substitutes for court action are being found not only in commercial arbitration, but also in administrative boards and commissions. Charges are heard that the rapid expansion of the scope of administrative activity is "standing proof of the inability of our unorganized and decentralized judicial systems to expand to meet modern needs." Dean Pound has expressed fear lest, in the wake of the administrative board, "nothing of importance be left to the courts." Although it may well be that commissions have a more fundamental place to fill than merely to supersede court action, the fact that their development has been hastened by the inability of the courts to keep pace with the social system seems incontestable.

In no other country of the world is so great a force maintained for a given amount of litigation. Yet, in frantic efforts to enable the courts to keep up with their work, we continue to add judge after judge to the bench, only to find that the defects are more fundamental than can be solved by mere numbers. Early in the present century a concerted movement was started to find ways for the more efficient utilization of the existing judicial machinery. One of the most promising products of this movement is the judicial council.

English Court Administration. Our state and federal judicial systems were founded upon the concepts of independence and localism. Not only were the courts rendered independent of the other departments of government, but each court was made largely independent of the others. As expressed by Chief Justice Taft, each judge was free to paddle his own canoe. This independence was further enhanced by the second concept, whereby the courts of each section were virtually distinct from those of the rest of the state or nation. The problem that had to be met was how to knit this mass of courts into a unified whole, and to provide some sort of effective administrative supervision. Above all, a need was felt for some agency whose duty it would be to make a continuous study of the working of the courts, and to advise as to changes that must of necessity be made from time to time. Leaders of bench and bar alike agreed with Judge Cardozo that the absence of some such agency was "one of the anomalies of our legal institutions."

In opening the crusade for a more scientific administration of our courts, Roscoe Pound had called the attention of the legal profession to the advantages of the modern English court organization and procedure.¹ The conspicuous success of the English reforms, as contrasted with our own half-hearted measures, gave promise of a solution. It was but natural that we should turn to them for guidance.

The first glance was singularly disappointing. England has rejected both of the traditions of our court system, and has clung instead to centralized authority within a centralized court. We have no official comparable to the Lord Chancellor, who not only is the true head of all the courts of England and Wales, but also knits together the courts, the cabinet, and Parliament. It was obvious that nothing approaching the English system of organization could be secured without thorough-going amendment of our constitutions; and even then, to secure an

¹ "The Causes of Popular Dissatisfaction with the Administration of Justice," 29 *Am. Bar Assoc. Rep.* 395 (1906).

official occupying the position of a Lord Chancellor was, for the time at least, out of the question. But it was equally obvious that the securing of many of the essentials of the English reforms, such as the mobility of judges and a simplified procedure, need not wait for such a change. We took another look, and our eye fell upon the Rules Committee.

This committee is one of the outstanding contributions of the English reforms to judicial organization, and its success in guiding the development of a business-like procedure is still the marvel of the common law lawyer. Here we saw a small council, made up of *nisi prius* as well as appellate judges, and since 1894 of practicing lawyers as well, proving its worth as an executive agency in one of the most important fields of judicial administration. Why not adapt such a committee to the wider demands of our own court systems? The idea seemed practicable, and it appeared to fit in with the proposals of the leaders for reform.

Judicial Councils Established. It would seem that this movement did not bear definite fruit until 1922, when Ohio provided for the first modern judicial council, and the federal government set up a Board of Senior Circuit Judges. As early as 1913 Wisconsin had established a Board of Circuit Judges, made up of all of the principal *nisi prius* judges of the state. This board, which has met annually since that date, has instituted various reforms in practice and procedure. Through the power of the chairman to "request judges whose calendars are not congested to assist those judges whose calendars are congested," it has been instrumental in equalizing the work of the courts and, except in Milwaukee, in keeping them well up with their work. But the Wisconsin experiment does not seem to have attracted the immediate attention of the other states.

Two years later New Jersey and Colorado, the first by statute, the second by order of the supreme court, set up councils to recommend changes in the rules of practice and procedure. Neither was given administrative powers, and the scope of their activity was too restricted to satisfy the needs of the situation. Neither has been active, and the Colorado council, although still maintaining a paper existence, has lapsed into a state of complete desuetude.

In 1919 the legislatures of two states, Massachusetts and Oregon, appointed commissions to study the entire field of judicial organization and to recommend ways and means of improvement. The Massachusetts commission stated that "it is not a good business arrangement for the commonwealth to leave the study of the judicial system and the formulation of suggestions for its development almost entirely to

the casual interest of individuals," and recommended the establishment of a permanent official body, composed of lawyers and judges, to perform these functions. Chairman Carey of the Oregon commission made a similar suggestion.

Neither legislature acted at the time, and Ohio stepped in to establish what is generally spoken of as the first judicial council. A statute of 1922 made provision for a council consisting of four judges of appellate courts, two *nisi prius* judges, and three practicing attorneys, the chief justice of the supreme court being chairman. The council is required to render biennial reports to the legislature, in addition to submitting suggestions from time to time for the consideration of the judges of the various courts. Power is given the council to compel witnesses to appear and testify, and to require the clerks of the various courts to render periodic reports. The statute is one of the most complete and best drafted of all the judicial council acts, but the legislature has always failed to make the necessary appropriations for expenses. The chief justice reports that consequently the council "has never functioned except in the most perfunctory way. . . . We [the members of the council] have felt that it is useless to try to do anything without funds, and we have also felt that it was hardly the proper thing to solicit private funds, fearing that the people, and perhaps the legislature as well, would feel that anything that might be recommended by the council would reflect the notions of those who had contributed to its expenses."² The council has never made a report to the legislature, and has made but few suggestions to the judges of the various courts.

In spite of the failure of the Ohio act, the year 1922 did not pass without a definite advance being made. Ex-President Taft, always a leader in the movement for judicial reform, now enjoyed the added prestige that accompanies our highest judicial office. In 1914 he had proposed that "authority and duty should be conferred upon the head of the federal judicial system, either the Chief Justice or a council of judges appointed by him, or by the Supreme Court, to consider each year the pending federal judicial business of the country and to distribute the federal judicial force . . . through the various districts and intermediate appellate courts" in accordance with the amount of business to be done.³ It is clear that the essentials of his proposal were the mobility of judges and some sort of administrative control to make this

² Letter from Carrington T. Marshall, president of the council, dated August 18, 1928.

³ "Attacks on the Courts and Legal Procedure," 5 Ky. L. Jour. 14-15.

mobility effective; precisely what sort of body should wield this control was of less immediate importance. When the Senate bill of 1921 to provide for additional judges was amended to provide for a Conference of Senior Circuit Judges, the Chief Justice immediately threw his influence behind the bill.⁴ Its passage in the latter part of 1922 marks one of the most forward-looking steps yet taken by Congress for the unification and efficiency of the federal courts. The provision for the mobility of district judges, under the supervision of the Chief Justice and the senior circuit judges, runs counter to the traditions both of independence and localism, and would appear to indicate a turning point in our federal court system. Many writers have refused to recognize the Conference as a judicial council because it is composed solely of appellate judges, neither the *nisi prius* courts nor the bar being represented. However this may be, it has undertaken the work of such a council and is entitled to rank beside the most successful of them.⁵

With the impetus given by the federal and Ohio acts, agitation for the creation of judicial councils bore fruit in a number of states. In 1923 Oregon established a small council of five, two appellate and three *nisi prius* judges. The next year Massachusetts created a council numbering four attorneys among its nine members. These were followed a year later by California⁶ and Washington, and in 1927 Connecticut, Kansas, and Rhode Island completed the list to date. North Carolina and North Dakota followed the Wisconsin plan of a conference of all the judges from the principal courts of the state.

Composition. Except for the federal Conference, which contains only appellate judges, and those states which have adopted a general conference of judges rather than a representative committee, the composition of the judicial councils now existing is fairly uniform. Their size varies from five members in Oregon to eleven in California, nine being the most favored number. In each case the final court of appeals is allotted from one to three members, the *nisi prius* courts from two to six. Ohio and California allot one and three seats, respectively, to their intermediate appellate courts. All but two states, Oregon and California, provide for membership of practicing attorneys who hold

⁴ It is possible that the proposal for the Conference originated with him. See the statement of Representative Walsh in the House, 62 Cong. Rec. 202.

⁵ At the time when the bill was passed the Chief Justice was also favoring a mixed council of judges and attorneys to regulate practice and procedure. See 6 Jour. Am. Jud. Soc. 36, 46.

⁶ Constitutional amendment in effect November 2, 1926.

no judicial office,⁷ and Connecticut and Rhode Island add a prosecuting attorney. Two of the most recent acts, those of Kansas and Washington, give membership to the chairmen of the judiciary committees of the legislature.

The judicial members of the council who are not expressly designated by statute are almost universally appointed by the chief justice, whereas in Ohio, Massachusetts, Connecticut, and Rhode Island the governor appoints the practitioners. Except in Massachusetts and Kansas, where the council selects its own chairman, the chief justice or his representative is *ex officio* chairman of the council.

Powers. The natural hesitancy on the part of the legislature to bestow extensive authority upon a new type of agency has restricted most judicial councils to fact-finding and recommending powers. Aside from their powers in connection with fact-finding,⁸ most of the councils have no authority to issue mandatory orders to any judge or court official. Their functions may be summarized as follows: (1) to conduct a continuous survey of the volume and condition of business in the various courts, the work accomplished, and the character of the results; (2) to devise ways of simplifying judicial procedure and improving the administration of justice; (3) to acquaint all courts with the results of various experiments in other jurisdictions, and to foster the adoption of such changes as seem in the interest of uniformity and the expedition of business; (4) to bring to the attention of the political departments of the government all problems which cannot be solved except by amendment of the laws or constitution; and (5) to conduct such special investigations as the legislature or governor may desire, and to act as an advisory body on such bills as shall be submitted for the council's consideration.

A few councils have been given additional powers. The California council has control over the assignment of judges to care for crowded calendars. The Wisconsin and federal conferences, through their chair-

⁷ The Oregon council, in its 1926 report, recommended that two practicing attorneys and one prosecuting attorney be added to the council, as well as the chairmen of the judiciary committees of the legislature. The California council contains one justice of the peace, who is, of course, primarily engaged in the practice of law. R. H. Phillips, secretary of the Connecticut council, reports that "without active practitioners on it, the council would not function."

⁸ Nearly all can require reports of various court officials, and a few of any government officer. An amendment giving such authority was found necessary in California, where its absence seriously handicapped the council in its initial work. Several can compel witnesses to testify and produce books and documents.

men, enjoy similar powers. In addition, the California council has a wide rule-making power to supplement the statutes on practice and procedure. These three, two of which we have mentioned as being frequently classed as other than judicial councils, stand out from the rest as to the scope of their authority.

Accomplishments. To generalize in regard to the activities of the different judicial councils is an impossible task. As in all new undertakings, it is the aggressive spirit of one or a few that counts, over and above mere paper organization. Several of the councils are only getting under way, and it is too early to pass judgment upon their work. Others appear to have failed to take the first steps. The Oregon council was inactive for two years because of lack of funds. For the same reason the Ohio council, after more than six years of statutory life, has not yet set about its tasks. On the other hand, we find the Massachusetts council holding fortnightly, or even weekly, meetings throughout the year, and the California council devoting the full time of one member to its work, he being relieved of his regular judicial duties. The potential value of the judicial council has been well established by the accomplishments of these more active groups.

Assignment of Judges. When the California council was organized in November, 1926, it felt that its first task should be to survey the judicial business of the state. Judge Hollzer was released from his duties as judge of the Superior Court and devoted his entire time to supervising this work. The results revealed some startling inequalities in the division of labor between the different *nisi prius* judges. Whereas those of the metropolitan districts were constantly falling farther behind in their work, some of the judges in the outlying districts tried as few as six cases in a year. The judicial council act provided a remedy for this condition through the mobility of judges, and the council took immediate advantage of this provision.

During the year 1927 nearly 800 assignments of judges were made, chiefly for the trial of cases in the superior courts, which are the principal *nisi prius* courts of the state. The same procedure has been followed during the current year. When the council was first organized, the Los Angeles courts were nearly two years behind in their work. Today, without impeding the work of the outlying districts, civil cases are being tried within ninety days and criminal trials are heard less than three weeks after the entry of the defendant's plea. Cases are now being disposed of at a faster rate than they are set for trial. The decrease in the number of cases filed seems to show that this healthy

condition of the calendar has produced many settlements and dismissals, and has reduced to a minimum the opportunities of defending merely for purposes of delay.⁹

The more complete utilization of the trial court personnel placed an added burden upon an already overworked system of appellate courts. By assigning judges of the superior court to the district courts of appeal, a far greater number of appeals was determined than ever before, and these tribunals were prevented from falling even more in arrears. The problem of still further relief for the appellate courts has recently occupied the attention of the council, and a constitutional amendment has been prepared which will permit substantial changes in their jurisdiction.

Similar control over the assignment of judges has also aided the federal and Wisconsin councils in relieving court congestion. Chief Justice Taft has referred to such mobility as "a change that ought to be made in every state."¹⁰ Its success when under the supervision of a judicial council is in striking contrast to its almost negligible influence when left to the individual judge to arrange under a system of reciprocity.

Master Calendar. Through the master calendar the California council is doing for the judge of the busy jurisdiction what the assignment plan does for those of the outlying districts. Under this plan the separate calendars of each department are abolished and a single central calendar substituted. As a judge finishes a case he calls the main office, and the next case on the master calendar is sent to him for trial. In this way the full time of each judge is utilized, and the possibility of a case not being reached on the date set is reduced. The fact that neither parties nor judge know who will try a given case is felt to be not without its advantages.

This plan was first tried in San Diego and Los Angeles. Six months' experience established its usefulness, and early last August, by an order of the council, it went into effect in every superior court of the

⁹ A similar experience in Detroit seems to bear out the conclusion that the number of suits formerly contested for purposes of delay exceeds those now brought because of the certainty of a speedy trial. The Detroit circuit court, feeling that many appeals from justices' courts were taken only for delay, decided to try such cases in the inverse order of their appeal, thus keeping the current appeals to date. Since the city was growing, an increased number of appeals would normally be expected. Instead, the number taken fell off nearly one half.

¹⁰ Quoted by Chief Justice Waste, "One Year of the Judicial Council," *Cal. St. Bar Jour.*, Jan., 1928.

state having two or more judges. The plan seems elementary, yet the fact remains that it took a judicial council to bring it into effective state-wide operation. There are many other jurisdictions where it could be used to advantage, and where a judicial council, charged with finding out what other states are doing, could hasten its adoption.

Practice and Procedure. The California council is the only one thus far given any appreciable measure of direct control over the practice and procedure of the courts. New sets of rules governing the trial of cases in both the superior and appellate courts went into effect last August and September, and are expected greatly to facilitate the business of those courts. Other proposals, involving the amendment or repeal of existing statutes, will be placed before the next session of the legislature in January. The promptness and thoroughness with which the council has entered upon this work, as compared with the hesitancy or total lack of activity on the part of the various supreme courts that have been vested with such powers, raises an interesting question as to the future of the judicial council as a rules committee.

Even in the absence of authority to make binding rules of practice and procedure, many councils have not been without beneficial influence in these fields. We have recently witnessed an outstanding example in the federal courts. When the Fall-Sinclair jury was dismissed because of jury tampering, we took it for granted that we were to witness another of our now famous scandals of the drawn-out examination of prospective jurors on the *voir dire*. We were surprised, on picking up the morning paper, to find that the jury was already impanelled and the case ready to proceed. The court had merely adopted the suggestion of the Board of Senior Circuit Judges that "the examination of prospective jurors shall be by the judge alone." Other recommendations by various councils, although attracting less attention at the moment, are even more promising of future betterment.

Statistics. "Everyone who has attempted to deal with the question of delays in the administration of justice has found his path obstructed by a mass of unintelligible statistics in respect to the exact condition of the dockets and the real business of the courts."¹¹ This condition blocks the solution of many defects, and even prevents agreement as to the presence or absence of the defects themselves. It fosters vague accusations and unworkable proposals for change. If the

¹¹ Report of the Fifth Conference of Senior Circuit Judges, Rep. Atty. Gen. (1926), 5, 7.

judicial council movement does nothing but furnish us with an expert and efficient fact-finding body, it will be well worth its cost. A well developed system of judicial statistics, such as that found today in England, is not to be had for the asking, and its acquisition will be one of the most difficult assignments for our councils to fulfill. Many of them have entered upon the task wholeheartedly, and the results thus far accomplished, considering the short time and limited funds available, are encouraging.

One of the greatest defects of the past has been that most jurisdictions were unacquainted with what other states and foreign countries were doing. The judicial council is furnishing a clearing house for exchanging and utilizing such information. Several councils have felt that first-hand contact with the work of other jurisdictions is the most valuable. Soon after organizing, the Massachusetts council sent one of its members to England to study court organization and procedure. His report has been the basis of many successful reforms. The recently organized council of Connecticut has sent a prominent member of the bar to study English appellate procedure. One of the most promising investigations is the recent survey, made by the California council, of the methods of court administration and the practice and procedure of the principal metropolitan centers of the United States. At the suggestion of Governor Young, correspondence was supplemented by a two-months' survey tour by a member of the council which carried him into the principal cities of the East and Middle West, as well as certain portions of Canada. The results of this survey are now being compiled, and will be published by the end of the present year. It should prove valuable, not only to California, but to other jurisdictions as well.

Advisory Body on Legislation. Although no attempt is here made to give a complete account of the activities of our various judicial councils, mention must be made of their value as advisory bodies on legislation. Several state legislatures have apparently adopted the regular practice of referring all important bills dealing with the courts to the judicial council. At the request of the legislature or the governor, various special investigations have been undertaken as a basis for future legislation. Many important statutes have been completely drafted by them. Such a permanent official body, intimately acquainted with what the courts are doing and trying to do, would seem to be the logical agency for such work.

Expense. The charge of excessive cost can scarcely be brought against the judicial council. Many councils have been seriously handicapped in their work by lack of funds. Most of them are working under appropriations of \$500 to \$1,000 a year, which, although sufficient for minor undertakings, make impossible the extensive surveys that conditions would seem to require. The activity of the California council is no doubt to be explained largely by the fact that the governor and legislature have placed \$50,000 at the body's disposal for two years' work. Unless the results fall far short of present indications, the saving to the state will be greatly in excess of this sum, and should give impetus to other states to follow a similar course.

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The Justice of the Peace—Recent Tendencies. The justice of the peace system exists today in every one of the forty-eight states. It was a product of a type of civilization in which such an arrangement for the trial of petty cases seemed appropriate. Increased population, the construction of modern highways, the development of means of transportation and communication, the establishment of a more definite system of legal principles and rules—all these have contributed to remove the conditions that formerly made justices of the peace necessary in every community. In recent years there has been much discussion and some action looking to the curtailment or the abolition of justices of the peace courts, but there has been little outright abolition of the justices courts in rural communities.¹ The decision of the Supreme Court of the United States in the *Tumey* case² has served to direct attention to the defects of the justice of the peace system.

An examination of the constitutions of the forty-eight states reveals the fact that the provisions concerning justices of the peace may be grouped in reasonably definite classes, first, with respect to legislative control over the office as such, and secondly, with respect to legislative control over the jurisdiction of the justices.³

¹ "The Passing of the Justice of the Peace," 12 *Virginia Law Register* 110 (1926); *County Government in Virginia*, prepared by the N. Y. Bureau of Municipal Research (January, 1927), pp. 48-50; *Constitutional Convention Bulletins Illinois* (1920), pp. 762-764; "County Government and Administration in Iowa," *Applied History* (1925), pp. 322-330.

² *Tumey v. Ohio*, 47 U. S. 437 (1927).

³ Chester H. Smith, "The Justice of the Peace System in the United States," 15 *Cal. Law Review*, 118-141 (1926-27).

The types of provisions relating to legislative control over the office of justice of the peace as such are: (1) those which provide expressly that the judicial power shall be vested in designated courts of which the justice of the peace is one,⁴ (2) those which provide that the judicial power of the state shall be vested in such inferior courts as may be established by law, and in which the justice of the peace is not mentioned,⁵ (3) those which provide that the judicial power of the state shall be vested in such courts as may be established by law, and further provide that a competent number of justices of the peace shall be appointed or elected,⁶ and (4) those which provide expressly for the justice of the peace as one of the courts of the state, but which provide further that the legislature may abolish the office of justice of the peace throughout the state, or which permit such abolition.⁷

The types of provisions relating to legislative control over the jurisdiction of justices of the peace are: (1) those which definitely specify the jurisdiction,⁸ (2) those which provide that the legislature may fix the jurisdiction, but not to exceed a specified limit, which is expressly stated,⁹ (3) those which provide specifically that the legislature may fix the jurisdiction,¹⁰ and (4) those which imply that the legislature may exercise this power.¹¹ Some of the constitutional provisions in regard to jurisdiction fall in one classification for civil cases and another for criminal trials, but, by and large, the classification as given includes both types of jurisdiction.

⁴ Ariz., Ark., Del., Fla., Ga., Idaho, Ill., Kans., Ky., Md., Mich., Minn., Miss., Mo., Mont., Nev., N. Mex., N. C., Okla., Oregon, S. D., Tenn., Texas, Utah, Wash., W. Va., Wis., Wyo.

⁵ California.

⁶ Ala., Colo., Conn., Iowa, Ind., Me., N. H., N. Y., Ohio, Pa., R. I., S. C., Vt.

⁷ La., Neb., N. J., N. D., Va. The North Dakota constitution (1913), Sec. 112, reads: "The legislative assembly shall have power to abolish the office of justice of the peace and confer that jurisdiction upon judges of county courts or elsewhere." The Massachusetts constitution (1780) contains provisions with reference to tenure of office (Ch. 111, Art. iii) and removals (Amends., Art. XXXVII) of justices of the peace, and nothing more. On jurisdiction, see 3 Pick. (Mass.), 508 (1827).

⁸ Ala., Ark., Fla., Ga., Ia., Miss., N. M., N. C., N. D., Tex., W. Va., Wyo.

⁹ Ariz., Cal., Colo., Idaho, Mich., Minn., Mont. Neb., Nev., N. H., S. C., S. D., Utah.

¹⁰ Conn., Del., Ill., Ind., Kans., Ky., La., Md., Mo., N. J., Okla., Ore., Pa., R. I., Tenn., Va., Wash., Wis.

¹¹ The office is created by constitutional provision, but with no provision for jurisdiction, in Maine, Mass., N. Y., Ohio, Vt.

To abolish outright, then, the office of justice of the peace would require in most states a change in the constitution; in a minority of states legislative enactment would suffice. But no state has abolished the system throughout its bounds, and in only a few states has any serious suggestion to this end been made. In the Louisiana constitutional convention of 1921 an attempt was made to abolish the office throughout the state, but the argument that it was a poor man's court fulfilling the needs of rural communities prevailed; hence, instead of abolishing the justices courts, a provision was adopted which gives the legislature complete power over these courts, even the power to abolish them.

The question of fee compensation for minor courts has been the subject of legislation in some states. Justices of the peace in California are paid by salary.¹² All minor courts in Nevada and Arizona are on a salary basis.¹³ By constitutional provision in Louisiana and South Carolina, the justices receive a salary instead of fees in criminal cases.¹⁴

Legislatures have used indirect methods of impairing the jurisdiction of the justices of the peace, either by taking away from the justices practically all civil and criminal jurisdiction, where the legislature is empowered to do so, or by creating other types of minor courts with concurrent jurisdiction. There has been a tendency in recent years to establish municipal courts, small claims courts, and juvenile and domestic relations courts in towns and cities, with the result of reducing materially or abolishing the jurisdiction of justices.¹⁵ In some instances these courts have jurisdiction over a considerable area adjacent to the town or city, or even throughout the county. Where county courts are established, they in some cases supersede justices of the peace courts; in most instances the county courts exist alongside justices' courts.

In Ohio the system of compensation whereby the remuneration of justices of the peace is directly dependent on the outcome of criminal cases before them was the subject of attack on constitutional grounds in the *Tumey* case. The result of the holding in that case is that a judge is disqualified, on grounds of personal interest, where he receives

¹² California Code of Civil Procedure (1915), Sec. 102(b).

¹³ "The Constitutionality of Fee Compensation for Courts," 36 *Yale Law Jour.*, 1171-75 (1926-27).

¹⁴ Louisiana constitution (1921), Sec. 50; South Carolina constitution (1895), Art. V, Sec. 20.

¹⁵ Reginald H. Smith, *Justice and the Poor*. (N. Y., 1919).

his fees only if the defendant is convicted.¹⁶ Apparently this decision has been largely responsible for two immediate results in Ohio, first, the enactment of a statute designed to save to the justices of the peace their fees in spite of the holding in the *Tumey* case, and secondly, a definite move on the part of the bar of the state for the establishment of a system of uniform inferior courts.

Senate Bill No. 72 enacted by the 1927 session of the Ohio legislature amends the General Code on the matter of fees for justices of the peace in criminal proceedings.¹⁷ Under the terms of this act the justices of the peace are required to pay into the treasury of the county all fees collected in state criminal cases in which the magistrate has final jurisdiction. Once a month the magistrate and other officers receive as compensation from the county general fund an amount equal to the sum-total of fees earned by them in such cases. It is doubtful whether the objection of the *Tumey* case is met by such an expedient.

A committee of the Ohio State Bar Association made a report on June 19, 1928, in which it recommends the passage of a bill by the legislature to create a rural court in each of the counties of the state.¹⁸ In each county this rural court, a court of record, would succeed to the powers, duties, and jurisdiction of justices of the peace.¹⁹ The "rural judge," who must be a practicing lawyer of three years' experience, and one or more magistrates are to be elected in each county; the judge, by the electors of the county outside municipal court districts; the magistrates, by the electors of magisterial districts, each such district to contain eight thousand to eighteen thousand inhabitants. The only requirements for magistrates are that they must be of good moral character and electors of the magisterial districts. The judge, magistrates, and constables are to be paid by salary, all fees being paid into the general county fund. The seat of the rural court is to be at the county court house, although provision is made that the rural judge, or a magistrate at the direction of the judge, may hold court at any place in the rural district where so doing would contribute to the convenience of the parties or to the ends of justice. Under this plan the fee system would disappear. If there were a real supervision of the magistrates by the rural judge, the system would have obvious merits.

¹⁶ *Tumey v. Ohio*, 47 U. S., 437, decided March 7, 1927.

¹⁷ *Laws of Ohio*, 1927, p. 269.

¹⁸ Committee on Establishment of Uniform Inferior Courts.

¹⁹ Constitution of Ohio (1851), Art. 4, Sec. 9, as amended Sept. 3, 1912.

Something has already been done in Ohio toward replacing justices of the peace. Over a score of the large cities have for many years had municipal courts which, speaking generally, have jurisdiction not only in the city where they sit, but also in the township or in a district composed of one or more townships. These courts exercise the jurisdiction usually held by justices of the peace.

In Virginia, cities, for the most part, are excluded from the jurisdiction of the county governments, and the problem of the justice of the peace is essentially rural. The constitution requires that "the General Assembly shall provide for the appointment or election and for the jurisdiction of such justices of the peace as the public interests may require,"²⁰ and the usual system of justices of the peace courts has been established by legislation. Recent acts passed by the Virginia Assembly make a beginning toward reform in the justice of the peace system. The act establishing juvenile and domestic relations courts in cities of twenty-five thousand or more inhabitants, with concurrent jurisdiction with justices of the peace within and one mile beyond the corporate limits of the city,²¹ and the act permitting counties to have trial justices appointed by the circuit court²² are indicative of the trend. Even more important in Virginia is the legislation of 1926 permitting the establishment for certain counties of courts with powers comparable to those of civil and police justices of the cities.²³ Chesterfield county has adopted the system provided for by this legislation. The trial justice appointed in this county holds court weekly in several places in the county, and sits in the more sparsely settled portions once a month. The Virginia act of 1926 is optional and is unlikely to solve promptly the justice of the peace problem throughout the state.

A Kansas statute passed in 1927 establishes city courts in Kansas City to take over the jurisdiction of justices of the peace courts, not only in the city, but throughout the county in which the city is situated.²⁴ A statute of the same year provides for judges for every township located in a county having a population of one hundred thousand to one hundred twenty-five thousand, and these judges have the jurisdiction formerly exercised by justices of the peace.²⁵ The act

²⁰ Constitution of Virginia (1902), Sec. 108.

²¹ General Laws of Virginia, 1923, Ch. 81.

²² Virginia Code, 1924, Secs. 4988-4988 (29).

²³ Acts of Virginia Assembly, 1926, Ch. 511.

²⁴ Laws of Kansas, 1927, Ch. 180.

²⁵ *Ibid.*, Ch. 182.

provides that justices of the peace of such townships shall have no jurisdiction over any case, civil or criminal, "except in civil actions for the recovery of money only where the amount claimed, exclusive of costs, does not exceed the sum of one dollar."²⁶ The provisions of this act may be adopted by any cities of the first class, or by cities of the second class having over thirteen thousand inhabitants. The judges of these courts must be lawyers of five years' practice.

In Mississippi a 1926 statute establishes a county court in each county having a population exceeding thirty-five thousand, or, not having such a population, if it has an assessed valuation of real and personal property exceeding seventeen million dollars, and in either event containing a municipality of five thousand or more inhabitants as shown by the federal census of 1920.²⁷ Any other county in the state may establish a county court. The judges of the county courts must have the qualifications required for judges of the circuit and chancery courts.

The Mississippi county courts have jurisdiction concurrent with justices of the peace in all matters, civil and criminal; they are given exclusively the jurisdiction previously exercised by justices of the peace in eminent domain, in the partition of personal property, and in actions of unlawful entry and detainer. In addition, the county courts have concurrent jurisdiction with the circuit court in misdemeanor cases, and concurrent jurisdiction with circuit and chancery courts in all cases where the principal amount involved is one thousand dollars or less, excluding divorce and alimony, matters testamentary and of administration, minors' business, cases of idiocy, lunacy, and persons of unsound mind.

Ten of the eighty-two counties of Mississippi come within the classification in which the establishment of the county court is made mandatory. Three other counties have by election adopted the system, while three counties by election rejected a proposal to establish it.²⁸ The Mississippi county courts take a good part of the work from justices of the peace. It is believed that if the court held sessions in each of the five supervisors' districts of the county, instead of at the

²⁶ In re Greer (1879), 58 Kans. 268, 48 Pac. 950, the constitutionality of a similar statute was upheld. But see *contra*, St. ex. rel. Burke v. Hinkel (1911), 144 Wis. 444, 129 N.W. 393.

²⁷ Laws of Mississippi, 1926, Ch. 131.

²⁸ Biennial Report of the Secretary of State of Mississippi (1926-27), pp. 156-157 (figures are as of May 31, 1927).

county court-house alone, the court would rapidly supplant the justices of the peace.

In Wisconsin, although there has been no amendment of statutes relating directly to justice of the peace courts since the code of 1898, nevertheless these courts have gradually lost much of their former importance. This has been accomplished in part by the creation of special municipal courts, and in other cases by conferring much of the statutory jurisdiction of the justice of the peace upon county courts. The acts creating county courts frequently deprive the justices of the peace of a given county of all criminal jurisdiction and frequently, also, of most of their civil jurisdiction. In Milwaukee county, by special statute, there is only one justice of the peace, and he has been deprived of practically all jurisdiction, though he retains the right to perform marriage ceremonies. A special district court has been created for Milwaukee county, with substantially the criminal jurisdiction of the old justices of the peace courts, and a number of special civil courts set up in the county have relieved the justices of their civil jurisdiction. There are also in Wisconsin thirty-four municipal courts and two superior courts, with jurisdiction co-extensive with that of justices of the peace. In the greater part of the state, however, the old system of justices of the peace remains in effect.²⁹

In Maryland a 1927 statute provides for legally trained judges to serve as justices of the peace for Allegheny county. Two courts, known as "the people's courts," have been provided; they have jurisdiction over minor criminal matters and in civil cases involving not over three hundred dollars.³⁰

The system of minor courts existing in Hawaii is of interest. The organic act vests the judicial power of the territory in "one supreme court, circuit courts, and in such inferior courts as the legislature may from time to time establish."³¹ Twenty-seven judicial districts have been created.³² The chief justice of the supreme court of the territory appoints one or more magistrates for each judicial district. They must be lawyers, and they may be removed by the supreme court. The magistrates have exclusive jurisdiction in civil matters involving amounts up to fifty dollars, and concurrent jurisdiction with the circuit courts

²⁹ Wisconsin Statutes, 1927, Vol. 1, Chs. 253 and 254; Laws of Wisconsin, 1909, Ch. 549; Laws of Wisconsin, 1913, Ch. 702.

³⁰ Laws of Maryland, 1927, pp. 521-530.

³¹ Chap. IV, Sec. 81.

³² Revised Laws of Hawaii, 1925, Vol. 1, Chs. 14 and 137.

in cases involving amounts up to five hundred dollars. Their criminal jurisdiction extends to offenses punishable by fine or by fine and imprisonment not exceeding one year. Each magistrate must make an annual report to the chief justice of the supreme court of the territory. The magistrate of the Honolulu district receives an annual salary of \$4,800; the other twenty-six districts, with four exceptions, pay an annual salary of \$1,200 or more.

Three methods of solving the justice of the peace situation present themselves: (1) the office may be abolished outright; (2) other types of minor courts may be created alongside the justices of the peace courts, with jurisdiction similar to that exercised by the justices; (3) there may be a limitation of the number of justices and the abolition of the fee system. Abolition of the office of justice of the peace may be accomplished by (1) constitutional provision directly abolishing the office, (2) constitutional provision or amendment authorizing the legislature to abolish the office, followed by legislative enactment, (3) legislation abolishing the office, in the few states where under present constitutional provision that is possible, (4) legislation taking away all, or practically all, jurisdiction and vesting such jurisdiction in other courts. This fourth method of indirect replacement is now being actively employed. Justices of the peace are, however, likely to continue in most of the states, and the evils of the justice system in such states may largely be met by abolishing the fee system, by reducing the number and jurisdiction of justices, and by setting up a more adequate judicial organization for small cases.

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NOTES ON INSTRUCTION AND RESEARCH

Significance of Functional Approach in the Introductory Course in Political Science.¹ Like many other words, the term "functional" as applied to the methods of teaching and studying government sometimes conveys an unintended meaning because of some special connotations to which the reader is accustomed. To some it may imply a study mainly of the multitude of social and economic activities out of which the institutions of government arise; to others it may imply the advocacy of a reorganization of government along the lines of "functional representation" as proposed by many socialists. The former connotation is not necessarily meant and the latter not at all. In the consideration also of the content of the introductory course for students of government, "functional approach" has often been mentioned as being in opposition to the more prevalent "structural" or "descriptive" approach.² This, likewise, is not necessarily true, for function and structure are but two aspects of the same thing. If it is a matter of attitude, however, and therefore of emphasis, they may be looked upon as in opposition.

The functional approach to the study of politics is principally one of attitude or point of view. It is, consequently, a functional attitude, more than it is a matter of different content, which it is expected the student will imbibe from the introductory course thus approached. The proponents of these two "opposed" approaches, arguing, it seems, from different premises, often manage to miss each other's basic idea. This lack of mutual understanding seems to invite a statement of the functional approach as it is understood by some one individual, especially if that individual is interested primarily in teaching in the field of the liberal arts and sciences rather than in the technical, professional fields of law, public administration, and what might be called political engineering.

Writers in recent years have deprecated the absence of science from political science. To the present writer the matter of adopting a functional attitude in the organization of college courses in political science

¹ See account of the round table conference on instruction in political science on functional rather than descriptive lines, *American Political Science Review*, XXI, 402-405.

² Report of round table conference on orientation courses, *ibid.*, XX, 410-412.

is a question of whether or not those courses will inculcate in the student an attitude of mind, a dynamic concept, which will square with the scientific methods and findings not only in the social but also in the other, more "natural," sciences; whether it will enable the student to expect and to apply truly scientific methods rather than impulsive responses to political phenomena. The functional attitude can be stated simply, but, because of the individual's cultivated background of age-old assumptions, it is not easily applied. And, superfluous though the reminder may appear to some readers, this cultural-background handicap calls for some slight statement of the cultural attitude-equipment prerequisite to a proper teaching of political functions, processes, and agencies.

For purposes of this paper, attention is merely called to certain assumptions as to the equipment of the instructor with the functional attitude. Among other things, it is taken for granted that he has such a concept of the universe, of which political phenomena are a part, that he sees human society as made up of infinitely varied and interlocked and everchanging patterns of association of men—of men who are always functioning or doing something; of men who have a common attachment to geologic, geographic, physical, and biologic phenomena; of men who have fundamental needs in common, who develop infinitely varied and altering appetites, desires, interests, and associational groupings, and who make claims upon and admit obligations toward one another; of men, who, because of their apparently common origin with the rest of biologic life, are all likewise in different states of development, none perfect in any respect, and none ever expected to be perfect, because of the dynamic element of constant and everlasting change and variation. It is expected that he would see that men, because of their inability to assume a completely objective point of view and a complete understanding of themselves, of their desires, frustrations, and sufferings, are continuously asking the "why" of it all, yet have been too easily satisfied with merely being told "what."³ It is, of course, assumed that the instructor is familiar with the fundamental methods of scientific investigation and thought, not only in the social but also in the natural sciences—that he is familiar with the use of observation, analysis, hypothesis, measurement, inductive reasoning, synthesis, and the making of further hypotheses for purposes of experiment and test. This assumes that in the classroom he approaches

³ G. E. G. Catlin, *Science and Method of Politics*, 6-7.

all phenomena, natural or cultural, with doubts and questioning, and with hypotheses in the place of beliefs and rationalizations;⁴ that he has some insight into his own rationalization and self-justification processes; that he insists that his students learn to recognize the superficialities of political opinion and authority, to prick the bubbles of dogma (even of professorial dogma), to leave question marks in the gaps in our field of positive knowledge, and to distinguish between political knowledge and political expediency.

One prerequisite attitude, at least, demands closer attention than do the preceding; and, in spite of its being necessary to any scientific approach, it cannot always be presumed that the teacher is equipped with it. This essential is a concept of the utility of political institutions without any concomitant concept of their utility toward any conceived ultimate end or goal of society. In other words, the teacher cannot afford to see any "meaning" or "significance" in political phenomena aside from that of the present serviceability of political institutions and processes to meet actual human needs and to adjust actual claims and interests. To be more explicit, the significance of a thing depends upon the kind and degree of interest which the observer has in it; and this interest, in turn, is an individual, subjective matter. For it is submitted that a purely objective observer—one who would be so entirely abstracted as to have no mundane connections and interests whatever—very likely would find no significance in human society at all. To him, society just is; and where it is going would probably mean little more than that it is on its way. And we have no assurance but that to him man's relationship to other forms of life might not be that of "yahoos" to "houyhnhnms."

Although man, because of the limitations of his biological nature and earthly attachments, is wholly unable to assume this detached, man-in-the-moon character, he does have a distinct point of view which is bound to be anthropocentric—not horse-centric or mouse-centric.⁵ From his point of view, the things of the earth serve him and derive their meaning from that service. Hence it is that the only significance or meaning one would dare to inject into things political, since any other significance would be based upon subjective values, would consist of the principle of the serviceability or utility of the political structures, processes, or institutions to the infinitely varied and

⁴ A view compatible with that expressed so well by J. H. Robinson in his *The Mind in the Making* seems desirable.

⁵ This is stated amusingly by Walter Lippmann in *The Phantom Public*, 32.

kaleidoscopically changing desires of the individuals and groups of individuals composing the units bound together under governmental authority.⁶ When a governmental institution ceases to serve those interests, it is ready for demise, and, though it may persist, it does so as a functionless vestigial organ. The essence of the meaning in politics must be grasped as a concept of service for immediate, or at least proximate, ends—not for any individually conceived or interpreted ultimate end. This is a notion of government and of practical politics as institutions actuated by ideas of present expediency—expediency as seen by those persons who either are in authority or are struggling to gain authority. Serviceability, moreover, as will be seen later, is the cementing principle between political functions, processes, structures, and law, since it is the principle that gives them significance.

Now, the function of anything is what it by nature usefully does. Politics or governmental activity is a function—one of the many functions of society⁷—the function by which men regulate (usually with the possible employment of force) their activities with and toward each other as individuals or groups of individuals, or as groups toward the individual and *vice versa*. Government is a function which at its borders blends with many other social functions. What government does constitutes the various functions of government. How government performs its functions is process or procedure. What government performs its functions with constitutes the agencies of government. These agencies may possess the character of either formal or informal structures of the nature of law and custom. The functional study of government is, then, the study of what government does, noting, primarily, how it does it, and secondarily, the structural and legal agencies through which it operates. Functional study is one principally in which the basic attitude emphasizes method, process, and procedure in politics—how it is done.

Laying the emphasis on process rather than on structure does not discard structure; far from it. It merely puts structure in its significant place. For if it is true that, speaking in terms of the universe rather than of man, there is no meaning to our social life except what we put

⁶ H. J. Laski, possibly borrowing freely from Duguit, puts it so strongly as to say that government is a great public service corporation, though that term connotes a legalistic concept. *Grammar of Politics*, 69–70.

⁷ It is for this reason that the study of government is here looked upon as a branch of sociology, in the broadest use of that term. Cf. Willoughby and Rogers, *Introduction to the Problem of Government*, 1.

into it—if it is true that the only safe meaning we can ascribe to social institutions is one of usefulness for the interests setting them up—it would seem to follow that such institutions are significant or have meaning to us only in relation to their functions. And, since the function of a political institution is to be of service to men or groups of men, and since it therefore affects their interests or desires, it is very important for them to know just how that service is performed. The agencies of these institutions are significant only in so far as they are tools for performance of processes. They derive meaning from the service they give. Structure is not, however, to be looked upon as less important because it derives its significance from process and function. It merely means that the efficiency of the instrument is measured in terms of its function. People are quite indifferent to structure, are relatively indifferent to process, but are keenly alive to the resulting product.⁸

A purely functional approach excludes a number of notions and practices often observed. One of these is in connection with the tendency to advocate “remedies” for ineffective institutions. While there is probably little attempt in university courses to present a purely formalistic content, the usual heavy emphasis on forms and on the law causes the students to put an unwarranted dependence on some such current proposals as city-manager government, parliamentary responsibility, budgetary forms, or proportional representation. One such proposal not yet passing current, but probably fully as valuable as the others from a practical, experimental point of view, is that of a governmental reorganization to allow for “functional representation,” as advocated by G. D. H. Cole⁹ and by the Webbs,¹⁰ and philosophically explained by Laski. But the functional approach has nothing to do with the advocacy of any such systems of government. It is rather concerned with the study, understanding, and explanation of political activities. Someone might object here that, given the functional course, there would be the same tendency to propose procedural “remedies,” e. g., to advocate the exercise of discretionary authority by certain administrative agencies or of rule-making by the judiciary. This is, however, a superficial view. Valuable again as these are for experimentation, emphasis upon them would also be merely an emphasis on the forms of political institutions—this time,

⁸ This is put quite forcibly by Laski in his *Grammar of Politics*, 17.

⁹ In *Guild Socialism*.

¹⁰ In *A Constitution for the Socialist Commonwealth of Great Britain*.

of procedure. Functional approach demands that all formal aspects of government shall be so taught that the underlying processes—natural, human, and associational—which have thus far gone under the undifferentiating term of politics will be constantly sought for and bit by bit exposed to view. To say that these processes are not yet well known and cannot, therefore, be taught is but to beg the question. They can be approached and taught as theories and hypotheses in the same way that the chemist and the physicist can teach about the behavior of atoms and electrons. This is not merely a matter of good teaching methods. It is a matter of a dynamic attitude which will allow for the full use of a truly scientific study of the naturalistic bases and development of political phenomena and will enable the student to be alert to the obstacles inherent in political studies.

Government, being a function, also has many functions of its own which it performs. These governmental functions are in modern times decidedly varied, and they are probably not capable of complete classification under any one system of heads. Their arrangement would depend entirely upon the immediate purpose of the student making it. Consequently, there is in the functional attitude no postulated number or nature of the functions of government. It would not allow for a statement as to what the function ought to be. It always hunts for the function as it is in order to lay bare the process involved. This means that one must give up any notions he may have as to any "ultimate" form of government, or any "best" procedure, even for particular purposes,¹¹ for he would have to recognize that the idea of that ultimate was nothing more than an individual mental concept. The moment he admits of any concept of the ultimate, he denies the patent facts of the present and past, that life, biologic and social, is in a state of evolution and has the possibilities of infinite variations. His interest is in observing the character and number of government functions and processes—not in any idea of the legitimate number of those functions.

One must also lay aside some other frequently encountered concepts. The functional approach, in following purely scientific methods, cannot admit the presence of ethical precepts of right or wrong in government.¹² When some political activity is conceived by the observer as wrong, he associates with it a feeling of disapproval, or even of hate,

¹¹ There might be a most expedient procedure under given conditions, but this would be a matter of applied politics and not of political science.

¹² Walter Lippmann, *A Preface to Politics*, 1-3.

which obscures the real nature of the qualities of the thing observed. While, as a citizen and a fellow-member of society with his student and his neighbor, the instructor cannot afford personally to be callous to the ethical standards of his day, he must, in searching for and presenting political processes, be indifferent to whether the practices he observes are corrupt or pure. To illustrate simply, if a campaign-expenditures act is found to be utterly unworkable in the face of economic forces beyond the control of the politicians concerned, the instructor and student should be able to remove their ethical spectacles in order to investigate the existing phenomenon and see it as it is and not as either of them might think it ought to be. For, if the origin of ethical concepts be social, the facts themselves, if brought to view, will speak admirably as to their own hardihood in the glare of moral sunlight. It is, thus, the duty of the political scientist to observe those practices, whatever they be, to analyze them, and even to attempt to measure the forces and energies involved in such situations of expediency, and to announce to his fellow-men what he has found.

Nor is he to be concerned about what use is made of his discoveries; and it is not his place, as a scientist, to suggest reforms. If his discoveries are of any practical value, and if he has presented them clearly, others who have interests affected will grasp their significance and utilize them. This does not mean that he should not attempt to synthesize his knowledge, but it must be purely for purposes of making new hypotheses with which to stimulate further research and investigation and discovery. Ethical concepts and institutions arise evidently as does government, as practical, utilitarian agencies to meet social needs. Hence, ethical criteria of right and wrong in government are fit subjects for examination in just the same way that governmental processes are, and to inject one into the other during or before the examination in only to obscure the vision.

As with ethical concepts, so with legal concepts of what is lawful or unlawful, legal or extra-legal, constitutional or unconstitutional. The usual over-stressing in descriptive courses of the legal aspects of government induces the student to think largely in terms of formal legal measurement of governmental acts, much as a technical public administrator would do, and to overlook the more important social, psychological nature and origin of the law itself as a political institution. Law, like ethics and government, is a utilitarian instrumentality of society. Having, in common with government, of which it composes a considerable share of the formal part, the same source in social activities and

needs, law cannot measure government—both are measured in terms of social function. Another way of looking at it is that, since government is the principal social agency for creating and enforcing law, it is futile to attempt either to judge or to describe government in terms of the law.¹³ This warning is necessary not only in connection with concepts of right and wrong and of legality, but also with concepts of justice and injustice, democracy and tyranny, liberty and the goose step, legitimate and illegitimate ends of government.

Since it is the function of a political scientist to observe political phenomena and to tell what he sees, he is forever asking questions as to the particular characteristics of this mental concept of the state or that mental concept of society, the public, public opinion, and law. He asks especially how these concepts arose in society. He is forever, in his study, challenging the statements of politicians, and even of publicists; for he must get at the motives, forces, and interests involved in political action. A political scientist who has had previous political experience as a ward politician, councilman, or legislator may find himself equipped with the possibilities of a keener insight into political phenomena, but it is open to grave question whether a person can, at the same time while performing his function as a political scientist, engage in political activity without rendering all his own activities and observations fit subjects for critical analysis.¹⁴ His behavior as a political participant becomes subject to the same motive forces and impelling interests as does that of his fellow politicians. He tends unthinkingly to acquire vested interests in the objects he has in view. With his observations subtly colored by such interests, the would-be political scientist could scarcely hope to discover the characteristics of political expediency and be indifferent to the use made of the knowledge gained. The moment he assumed the character of a "good citizen" and tried to put his knowledge into use for the "improvement" of political conditions he would be injecting into his own activities the practical political motives of expediency, and as a teacher he would tend to be a preacher.

¹³ Cf. John Chipman Gray, *The Nature and Sources of the Law* (2nd ed.), Ch. IV, and pp. 308-309. M. Duguit states the relation between social function and law thus: "This idea of a social function which both statesmen and political theorists are beginning to place, as they perceive it, at the very root of public law is no more than the idea of public service." *Law in the Modern State*, 39. Cf. also Roscoe Pound, *Introduction to the Philosophy of Law*, 97-98.

¹⁴ This, it would seem, need not necessarily apply to the teacher of practical, professional courses, such as in public administration.

He can scarcely expect to be the star performer and the spectator at the same time.¹⁵

Teaching of processes with scientific methods in mind, and with exclusion of active political efforts, does not mean that the teacher should not bring to the attention of his students the numerous efforts that are being made to bring about more adequate adjustments (such as model constitutions, legislative reference bureaus, etc.), but he should see to it that he is teaching them as parts of processes that he is observing and not as one who has an *interest* in them. In the present writer's opinion, schools of practical politics cannot arise and function successfully until the real political scientist, devoid of political motives, even of the motive of reform, prepares the way by analyses of motives, forces, and processes. To quote Professor Merriam, "Political science must rest upon a more fundamental basis than 'prudence' or interchange of information or experience."¹⁶ If we are to expect this kind of research and discovery, and if we are to expect any future political inventiveness, students must be trained in that direction from the time they begin their elementary course.

The fact that the political scientist must be content to let others, persons with whom he is not functionally associated, make use of his discoveries, has another very important bearing on his manner of teaching. It can scarcely be his function to teach any brand of "citizenship" or "Americanization" or any any other -ization or -ism. Were he to try it, his inclination would doubtless be to preach those institutions, adjustments, and emotional reactions to which he himself has through life become culturally accustomed. Political life today is the product of traditional activity and expedient adjustments, more or less efficient, among vastly complex and contending social needs, claims, and interests of the present time. And the teacher must expect the future generation, likewise, when it comes into its own, to compound expediency and tradition—but with traditions modified by a greater

¹⁵ The embarrassing disagreements, mentioned by Professor Merriam, among "*prudents*, the professional students of government, and political savants," in their discussions may perhaps be due in part to such an attempted double rôle—mentally, if not actually. *New Aspects of Politics*, 165. The incompatibility of political action and political investigation need not necessarily prevent the political scientist from making practical suggestions as a matter of present expediency, or political *prudence*, as Professor Merriam calls it, provided he takes no part in its adoption and fully recognizes that it can be nothing more than a suggestion for experimentation, and that it may or may not work.

¹⁶ *New Aspects of Politics*, 217.

knowledge of things and processes than is now possible. Students are more in need of knowledge and of methods of procuring more knowledge than they are of present-day interpretations. Since they are to live their own lives, the best service the present political scientist can render them is merely to keep gathering and piecing together the fragments of political knowledge without attempting to determine the future, tempting though such an occupation may be. The politician can do that with his own technique.

The pertinence of this whole matter of functional attitude with its prerequisite intellectual equipment and its resultant limitations upon age-old concepts, and upon pedagogical and political activities of the political scientist, is that it is all a part of a purely scientific technique. For, after all, the essence of science is not only in the fund of knowledge acquired, and of knowledge in such form as to enable prediction of what will happen under given conditions, but it is also in the dynamic process of finding it. The functional attitude is preparatory to the scientific technique of analyzing political effects, whether the effects be in the form of processes or of structure, or even of symbolic conceptions. In the search for the causes of effects, especially effects in the form of processes, one soon finds oneself dealing with potential or active forces in their elementary character. Functional attitude prepares one to search for the relationship of cause and effect. It would make no difference, as far as the process is concerned, if he should find that the cause of a particular effect were in reality a chain, or many chains, of sequential or evolutionary causes, or even a vast network of such sequences. It would merely mean that each such sequence and each factor in the product is a fit subject for further investigation by the same methods, and so on *ad infinitum*. Possibly when students of government get thoroughly in the habit of looking for forces as causes in processes, some one will take the much-needed step of devising some suitable unit of measurement by which the energy and effectiveness of political forces can be calculated.

The constant search for and exposition of political processes, moreover, will keep the mind of the teacher and the student prepared for any contributions which the economists or other social scientists may have to offer through the processes they discover. It is probable that there would develop a greater alertness to the contributions also of the anthropologist, the bio-chemist, and especially the psychologist. It may be possible, for instance, that present tendencies in psychological research will give us keys to social processes and measurement through an

understanding of behavior, and the student should be previously prepared to evaluate for politics any such contributions when they come. It seems that an emphasis on functions, processes, and forces ultimately cannot fail to link up our knowledge of political life with that of the rest of the more material forces and energies of the universe—this even though the material side may not tell the whole story.

Much of the future of political science, as distinct from other and closely related fields, rests, it seems, with the kind of courses offered to undergraduates. The key problem is that of the arrangement of the content, and that, above all, of the attitude taken, in the introductory course. The usual and traditional course in political science, whether introductory or advanced,¹⁷ is the structural or so-called descriptive course. The structure of government and the laws maintaining that structure form the bulk of the course—so much of it, in fact, that students tend to emerge with little more than a static concept and the feeling that the yardstick for the measurement of government is a hybrid of relatively transitory law and ethics of the day. As has been pointed out, both the structure and the law are utilitarian agencies of society and cannot, therefore, except superficially, be studied in terms of each other. There has been some attempt to make it more dynamic by introducing accounts of the legal procedure, but this has not explained to the student how government works—especially how practical politics works. He too often sees great discrepancies between the supposed legal procedure and what actually happens. Any introductory course in this field, if it covers enough ground to prepare the student for advanced study, must necessarily be mainly descriptive for the student. But it would be more effective if it described functions and actual processes primarily, and described structure and law as the servants which aid or hinder the processes of political adjustment and of maintaining approximate equilibrium of human desires and interests.

It probably makes little difference whether the introductory course presents for its substance American government or comparative government; the basic assumption must be the same. This assumption, if it really is no more than an assumption, is that human beings, having,

¹⁷ One rather serious pedagogical difficulty with the descriptive course is that it is susceptible to only a slight gradation in intellectual difficulty for advanced students. While the more difficult courses usually require memorizing of a greater amount of structural and legal description, too often the student is not required to demonstrate any increased power of detecting significant processes and relationships.

in general, like biological characteristics, have also like needs and fundamentally behave much alike, developing in their social life claims and obligations resulting in very like, if not identical, political behavior. It assumes that the underlying political forces are much the same in England, Russia, and the United States; that a Lloyd George or a Woodrow Wilson attains political dominance by very similar tactics; that the difference in outward processes are not so much in kind as in the degree of complexity of the interests involved and the instrumentalities of structure and law devised to perform them.

It does not seem to make much difference whether the course has the student begin with a survey of the social activities out of which governmental functions emerge and then work toward the functions bordering on other social fields. Possibly the former would be too slow for the purposes of an introductory course, especially when the student can be directed to collateral courses in sociology, economics, and history. This is a matter, however, of individual pedagogical technique for the teacher, or one of mere interest or attraction to the student. Functional approach, again, is more than a matter of good teaching.

Processes can, perhaps, be adequately presented in American government by studying separately, for example, and as is commonly done, the various units of governmental authority—national, state, and local. But it would be more in consonance with the functional attitude to take up first a brief account of some general phases of political processes, possibly political leadership and following, and then trace each function. The function of law-making, for example, could be carried through all the governmental units, branches, and devices, explaining the formal and, in so far as they are available, the informal processes involved. The making of law is a social process. In order to understand it, the student is required to examine the forces and processes which create constitutional, statutory, and common law and the qualities which give these the character of law.¹⁸ To be more specific, the study of statute law alone would involve its substantial informal preparation and its proposal by interests desiring it, the formal process of enactment, together with its background of informal struggle (in the lobby, etc.), whether in a city council, a state legislature, or in Congress. It would involve an account of administrative elaboration and adaptation, and even judicial determination of its nature,¹⁹ including the mental process-

¹⁸ F. H. Allport, "The Psychological Nature of Political Structure," *American Political Science Review*, XXI, 612-614.

¹⁹ Cf. J. C. Gray, *Nature and Sources of the Law*, Ch. IV.

es of the judges.²⁰ Some account, also, would have to be given of the lack of and the need for effective criteria of the relative expediency of proposed legislation, and the relative efficiency of statutes already on the books. Finally, it would demand an examination of the processes by which laws are altered and become extinct, whether by amendment, substitution, lack of enforcement, failure of convictions, interpretation, or repeal. Thus would the student see law-making as a great social function carried out by many specialized processes and agencies. The structure and composition of the legislative bodies and of the constitutional conventions would, of necessity, have to be described, but they would assume their natural rôle of instrumentalities. Pedagogically, such a course need be neither inductive nor deductive in method—it seems bound to be explanatory in order to save time.

After all, the end desired in an introductory course appears to be one of attitude, combined with an adequate accumulation of relevant knowledge. That attitude involves a concept which envisages government as an evolutionary product; as a product of the struggle between various kinds of human interests, forces, and drives; as a product for today's consumption and not intended for all time. It would call for an idea of structure and law, no matter how fundamental, as agencies for political service, and therefore subject to change with or without notice. Although, for some time to come, the course will contain far more of structure than of processes, the emphasis and the attitude of the functional approach would, it is submitted, tend to instill an expectation of new discoveries to fill in the admitted lacunae in our knowledge, and would instill, therefore, a readiness to accept contributions from related disciplines. In other words, the end is to imbue the student with a dynamic rather than a static concept, or, as some one has termed it, "insight."

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²⁰ Cf. B. N. Cardozo, *The Nature of the Judicial Process*, Lect. IV.

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

The headquarters of the American Political Science Association at the Chicago meeting December 27-29 will be the Stevens Hotel, and all round-table sessions, as well as the general sessions, will be held there. The same hotel will be the headquarters of other organizations meeting in Chicago at the same time, including the American Economic Association, the American Statistical Association, the American Association for Labor Legislation, and the Association of American Law Schools. Members are advised to make reservations early. As in previous years, the round tables, meeting on the forenoons of three days, will be a principal feature of the program. In order that the discussions may be planned for in advance, it is suggested that members communicate at once with the chairman of the round table in which they wish to participate. The following round tables (with director in each case) have been arranged: (1) Personnel, Mr. Fred Telford, Bureau of Public Personnel Administration, Washington, D. C.; (2) Administrative law, Professor John Dickinson, Princeton University; (3) Administration of foreign offices, Dr. Raymond L. Buell, Foreign Policy Association; (4) Imperialism as a factor in post-war politics, Professor Parker T. Moon, Columbia University; (5) Comparative party politics, Professor John M. Gaus, University of Wisconsin; (6) Teaching of government, Professor O. Garfield Jones, University of Toledo; and (7) Political corruption, Professor Peter H. Odegard, Williams College. There will also be a round table on municipal government and one on statutes. The latter will be participated in by members both of the American Political Science Association and of the Association of American Law Schools. On the 27th there will be a luncheon, with a talk by Dr. Charles A. Beard on "The Constitutional Crisis in Jugoslavia," and at the afternoon session there will be papers by Professor Frederick A. Cleveland, of Boston University, on "The American Conception of Sovereignty and its Practical Applications;" Mr. P. G. Agnew, secretary of the American Engineering Standards Committee, on "Political Incidence of Standardization in Industry"; Professor T. V. Smith, of the University of Chicago, on "Political Equalitarianism and Democracy." In the evening there

will be a joint meeting with the American Economic Association at which the presidential addresses will be delivered. On the 28th there will be a luncheon at which reports will be made by the Association's committee on policy and also one of its representatives on the Social Science Research Council. The afternoon program will be devoted to a consideration of problems of local government. Mr. Walter Millard, of the National Municipal League, will speak on city-county consolidation and the county manager, and Professor Ivan Pollock, of the State University of Iowa, on the subject of state supervision of local finances. The annual business meeting of the Association will take place at four o'clock on the same day, and it is planned to hold an open meeting in the evening to hear addresses of notable speakers. The Association will join in a luncheon with the Association of American Law Schools on the 29th. The concluding program that afternoon will bring discussion of the following subjects: "Congressional Control of Foreign Policies," by Professor Harold M. Vinacke, of the University of Cincinnati; "Campaign Expenditures," by Professor Edward M. Sait, of Pomona College; and "The Proletarian Parties of Japan," by Professor Kenneth Colegrove, of Northwestern University.

The chairman of the committee on local arrangements is Professor Kenneth Colegrove, of Northwestern University; the chairman of the committee on program is Professor S. Gale Lowrie, of the University of Cincinnati; and a committee to nominate officers for 1929 has been appointed consisting of Dean Isidor Loeb, of Washington University (St. Louis), chairman, and Professors Clyde L. King, Frank G. Bates, Graham H. Stuart, and Frederick A. Middlebush. Members are invited to send suggestions to any of these committees.

Dr. Richard C. Spencer, formerly at the University of Illinois, is now assistant professor of political science at Western Reserve University.

Mr. Hiram H. Stout, recently a student of political science at Oxford, has been appointed instructor at DePauw University.

Dr. Claudius O. Johnson, formerly of the University of Chattanooga, is now professor of political science and head of the department of history and political science at the State College of Washington.

Dr. Waldo Schumacher, recently appointed professor of government at the University of Oregon, has been made chairman of the

group in charge of the newly established freshman survey course in the social sciences.

Mr. H. A. Alderfer, of Syracuse University, has become assistant professor of political science at Pennsylvania State College.

Professor Jacob Tanger is on leave of absence from Pennsylvania State College during the first semester and is travelling in Europe.

Dr. James Hart, of the Johns Hopkins University, served as the official representative of the American Political Science Association at the Institute of Public Affairs held at the University of Virginia in August.

Mr. Carl L. Heyerdahl, graduate student in political science at the University of Wisconsin, has been appointed instructor in history and political science at Purdue University.

Professor A. B. Butts, of the Mississippi Agricultural and Mechanical College, was admitted to the bar in Mississippi last February. He spent the past summer at the Yale Law School. Mr. Will J. Evans has been appointed instructor in political science in the Agricultural and Mechanical College.

Dr. Claude A. Buss, of the University of Pennsylvania, recently a Carnegie fellow in international law, has been appointed instructor in political science at Grove City College.

Mr. David W. Wainhouse, of Oxford University, holds a Penfield travelling scholarship in international law from the University of Pennsylvania and is completing a study of visit and search in international law. Mr. William C. White, reappointed to a Penfield scholarship, is in Moscow studying the new Russian constitutional system.

Professor Carl Brinkmann, of the University of Heidelberg, is engaged in the study of civic education in the United States, making his headquarters at the University of Chicago. This inquiry is part of a series of studies in comparative civic education, publication of which is expected to begin shortly.

Dr. Royden J. Dangerfield, formerly a graduate student at the University of Chicago, is now assistant professor of political science at the University of Oklahoma. Dr. L. Vaughn has a similar position at the College of William and Mary, and Dr. Harwood L. Childs is professor of political science at Bucknell University.

Professor Frank M. Stewart, associate professor of government at the University of Texas, has been given leave of absence for the first semester of the present academic year to conduct a study of highway administration in Texas. He is working under a grant from the Laura Spelman Rockefeller Memorial Foundation, which has set aside a fund for research in the social sciences in the Southwest.

Mr. Jerome L. LeMaster, formerly at the University of Illinois, has joined the political science staff at Oregon State College with the rank of assistant professor. Messrs. Merritt M. Chambers and Wilbur P. Riddlesbarger have been promoted to assistant professorships in the same department. Dr. Roy M. Lockenour, until recently assistant professor of political science at Oregon State College, has accepted appointment as professor of law at Willamette University, Salem, Oregon.

The following changes in personnel have been made in the political science department at Dartmouth College: Mr. David M. Amacker has returned after a year spent in teaching at the Louisiana Polytechnic Institute, and Mr. Milton V. Smith after a year spent in study at the University of California; Dr. Luther H. Evans, formerly of New York University, has been appointed instructor; and Mr. Edward F. Dow has resigned to continue his graduate work at Harvard.

Mr. Bruce Smith, of the National Institute of Public Administration, went to Europe at the end of August to study methods of collecting criminal statistics in European countries, in connection with his work for the Committee on Uniform Crime Records of the International Association of Chiefs of Police. Mr. Donald Stone, formerly of the Cincinnati Bureau of Municipal Research, has joined Mr. Smith's staff in New York, and will be associated with him in the preparation of his report on uniform crime records.

At the State University of Iowa, Dr. Kirk H. Porter has been promoted from associate professor to full professor of political science; Dr. Herman H. Trachsel, from instructor to associate; and Dr. Dorothy Shaffter, from assistant to instructor. Dr. Trachsel is making an intensive study of the operation of public utilities in Iowa.

At New York University Dr. Rinehart J. Swenson has been advanced from associate to full professor of government; Dr. Luther B. Evans has resigned to accept an instructorship at Dartmouth; and Mr.

George K. Reiblich has been appointed instructor and Mr. Ralph Seward assistant instructor. Professor Rufus D. Smith, chairman of the department, has been raised from assistant to associate dean.

The annual meeting of the New York Academy of Political Science, to be held November 23, will deal with the general subject of the preservation of peace, with sessions devoted specifically to "The Renunciation of War as an Instrument of National Policy," "New Uses for the Machinery for the Settlement of International Disputes," and "The Case for the Pact."

The National Municipal League has appointed a committee on the teaching of municipal government in colleges and universities, under the chairmanship of Professor William Anderson, of the University of Minnesota. The following are the members of the preliminary committee, which may later be increased in number: William Anderson, chairman; Charles A. Beard, H. S. Buttenheim, Edwin A. Cottrell, H. W. Dodds, John A. Fairlie, Luther Gulick, A. C. Hanford, O. Garfield Jones, Arthur E. Morgan, W. E. Mosher, W. B. Munro, Thomas H. Reed, C. E. Ridley, and Russell Forbes. As a first step, the committee is planning to formulate a statement of the objectives of college and university courses in the field of municipal government.

The law faculty of the University of Leyden announces a prize of 5,000 Dutch guilders for the best essay submitted to the dean of the faculty on or before May 1, 1930, on "the conditions in which the acts of a state may be considered by another state as unlawful on the ground that they are in conflict with fundamental principles of private law, including private international law, and the manner in which the damage caused by such wrongful acts is to be repaired."

At the Hanover Conference of the Social Science Research Council held in August it was decided that the first issue of *Social Science Abstracts* should appear in March, 1929. Only articles in periodicals will be abstracted in 1929; books, monographs, and serials will not be included until the second year. It is estimated that about 15,000 articles will be abstracted the first year. From these beginnings, *Social Science Abstracts* will work toward inclusiveness. The yearly subscription rate has been fixed at \$6.00, including annual indexes. Subscriptions and other communications may be sent to the Editor, 611 Fayerweather Hall, Columbia University, New York City.

The National Municipal League met jointly with the Governmental Research Conference and the National Association of Civic Secretaries at Cincinnati on October 16-17. Among other features was a report from the National Committee on Municipal Standards, presented by the secretary, Mr. Clarence E. Ridley. Addresses were given by Dr. Charles A. Beard, on the city's place in civilization; Professor Joseph P. Harris, on the practical workings of proportional representation in American cities; Professors Wylie Kirkpatrick, Herman C. Beyle, and others, on "selling the work of government to the people;" and Messrs. John Ihlder, Bleecker Marquette, and others, on the city government's responsibility in housing. A comparison of certain municipal administrative practices in Great Britain and the United States, by Mr. Arthur Collins, financial adviser to local authorities in England, was the leading feature of a luncheon meeting.

Yale University has received a gift of \$350,000 from Mr. and Mrs. Philip B. Stewart, of Santa Barbara, Calif., Mr. Alfred Cowles, of Chicago, Ill., and Mr. and Mrs. William H. Cowles, of Spokane, Wash., to establish the Alfred Cowles Foundation for the Study of Government. "This generous and timely gift," comments President Angell, "will enable Yale to proceed at once with plans for the promotion of the study of those phases of American government which are of chief practical importance to the citizen. At present the College offers a considerable group of courses in the field of government dealing with theoretical and descriptive branches of the subject. Though the work now offered is substantially equivalent in scope to that of other liberal arts colleges, need has long been felt for further development of study along lines which offer the student the largest opportunities for usefulness in the political life of his community. The Cowles Foundation now makes this possible. A part of the income will be used to equip the University with a comprehensive collection of materials relating especially to the practical problems of state and municipal governments and the activities of political parties and the electorate. Another part will make possible a series of courses to provide historical background of government, and to utilize these materials under the direction of a distinguished teacher soon to be added to the faculty. Graduate work will be promoted by offering generous fellowships to selected students of Yale and other universities; and efforts will be made to stimulate intensive study of political problems by undergraduates through honors courses open to students of high rank."

The Williamstown Institute of Politics. The eighth annual session of the Institute of Politics was held in Williamstown August 2-30. Attention this year was turned more generally than ever before in non-European directions, indicating, probably unintentionally, the relative indifference of Americans to affairs not directly of American concern. Only three of the leaders this year concerned themselves with matters European. Count Carlo Sforza, former Italian minister for foreign affairs, conducted a general conference on "Problems of Peace in Europe," and gave a lecture on "The Responsibilities for the World War: Personal Recollections." In general, his outlook was optimistic for the continuation of peaceful conditions, despite the Polish corridor and the question of Austro-German union. He contended that the revisionist efforts to exonerate the Central Powers were not calculated to help the cause of democracy in Germany. Immediate responsibility for the war he laid on the Austrian autocracy, and general responsibility on the European system of equilibrium in 1914. Dr. Louis Pierard, head of the Belgian Labor party, gave a course of lectures on "Current Political Problems in Belgium," which dealt largely with conditions among the workers; and Dr. Otto Hoetzsch, of the University of Berlin, member of the Reichstag, gave a similar course on "Germany's Foreign and Domestic Policies."

The rest of the program provided a consideration of large ideas and basic facts combined with present-day policies and current events. The approaching presidential election increased the interest in the questions of political psychology and method, in the farm problem, in the Nicaraguan question, and in the Kellogg multilateral treaties. At the same time, the general subject of economic imperialism, and the clash or accommodation of widely different civilizations in Latin America, Asia Minor, Africa, and the Far East, came up for extensive discussion.

Under the leadership of Professor Graham Wallas, of the London School of Economics, a round table was conducted on "Methods of Social Direction," supplemented by three lectures on the same subject. In these Professor Wallas emphasized the "new social dimensions" produced by modern science and industry, and the necessity of bringing under the deliberate control of human reason the social problems hitherto left to chance. He urged the abandonment of eighteenth-century notions of natural right and divine providence, and the development of trust on the part of the voter toward his representative, coupled with a sense of responsibility by the latter and his

non-political expert advisers. To function under modern conditions, democracy must learn how to utilize scientific knowledge, how to choose experts. The objective, rational, scientific approach to current problems is essential. Intensified thinking in political life must be developed and combined with creative imagination. Unfortunately, as Professor Wallas was beginning to discuss concrete political mechanisms he was suddenly recalled to London and the meetings were discontinued.

"Agriculture and the Agricultural Surplus: an International Approach" was the topic considered in a round table directed by Professor C. R. Fay, of the University of Toronto. His theme was, in the main, that agriculture must attend to its own salvation, through organizing coöperative marketing associations large enough to reach the terminal markets. The Canadian wheat pool, the California fruit growers' exchange, and the new livestock commission agencies were described as examples of successful coöperation in America. The McNary-Haugen bill was analyzed and criticized unfavorably, and reserved comment was made on the proposals put forth by Hoover and Smith in their acceptance speeches. Professor Fay remarked "that both parties have seriously underestimated the power of coöperative organization as a force slowly to pull around the agricultural situation. People do not seem to be aware of the dynamic work that coöperatives are doing in this country."

The relations of the United States with Latin America were considered this year more extensively than ever, being taken up in their political, economic, and legal aspects in three round tables. Professor Charles W. Hackett, of the University of Texas, in a round table entitled "Recent Inter-American Relations and Problems," gave consideration to events in respect to Mexico, Nicaragua, and the Havana Conference. The conduct of negotiations with Mexico by the State Department was criticized for resorting to diplomatic pressure before an appeal to the Mexican courts had been made. It is perhaps significant that the representative of the oil companies expressed dissatisfaction with the present diplomatic settlement. Dealings with Nicaragua were called bungling, vacillating, and inconsistent. It was assumed that the canal rights secured under the Bryan-Chamorro treaty were at the bottom of our intervention there. It was alleged that the Coolidge-Hughes doctrine of intervention was an open repudiation of the Pan-Americanism advocated by Blaine and Wilson.

"Inter-American Economic and Commercial Relations" were discussed under the leadership of Professor Harry T. Collings, of the University of Pennsylvania. With political considerations in the background, and with mutual economic needs to the fore, the relations of the United States with Latin America appeared to be much more satisfactory. The growing need for Latin American products by the United States was emphasized. In regard to imperialism in the Caribbean, it was asserted that American policies are natural and inevitable; that, despite mistakes, they have been carried out with moderation and forbearance in the face of difficulties and provocations, and that they compare favorably with the policies of other nations.

Legal questions came up in the round table on the "Protection of Citizens Abroad," led by Professor Edwin M. Borchard, of Yale University. He stressed the obligation of citizens to submit abroad to the local law and local courts until they have actually suffered injury through denial of justice. He regretted President Coolidge's recent allusion to American property abroad as part of the national domain, because such an assertion is "capable of misrepresentation." He pointed out the inability of our own government in some circumstances to protect aliens in this country. He made clear the way in which individual claims can be influenced in their settlement by policy rather than right and law. He particularly advocated an international court of claims to which individuals could appeal as of right, with or without the support of their government, against a foreign government. In a special conference Professor Borchard also discussed the Kellogg treaties outlawing war, contending that the reservations advanced by France and Great Britain actually sanction every readily conceivable war. Considerable disagreement with this interpretation as too legalistic, and as ignoring the psychological factors in the situation and the force of public opinion, was expressed by other members of the conference.

Most of the rest of the program dealt with the clash of Western culture and imperialism with Eastern nationalism in Asia. The successful struggle of an Asiatic people against the West was described, both in lectures and in a round table, by Halide Edib Hanum, the exiled Turkish feminist and nationalist, who took up "Modern Turkey and its Problems." She particularly emphasized the background of the modernization of Turkey, showing in what respects it is not a recent or sudden development. She also considered the emancipation of Turkish women, the secularization of the Turkish state, and the ways

in which the problem of non-Turkish nationalities has been advanced toward a solution.

Some of the more fundamental aspects of the clash of cultures were taken up by Professor R. D. McKenzie, of the University of Washington, in his round table on "Population Problems on the Pacific Rim." This was one of the most illuminating discussions of the session. It was here demonstrated that economically the Pacific area is a coöperating rather than competing unit. The idea that the Occidental peoples are essentially superior to Orientals was combatted. The working of economic forces to form regional interrelationships among the Pacific regions was emphasized, and the effect of industrial development was considered. It was shown that Orientals really migrate very little, and that emigration is no solution for Japan's population problem. The relations of population movement and so-called "exploitation" of native peoples to economic progress were considered objectively and optimistically, and the ways in which race prejudice has clouded certain issues were made clear. In regard to the alleged more rapid breeding among Orientals, the leader asserted that fears based on this idea are groundless, declaring that the process of urbanization, education, and the rising standard of living which comes with the spread of industrialization will decrease the birth-rate among Orientals as it has among Occidentals. The difficulties, he said, arise more from cultural than from racial differences, and many even of the former are being levelled through economic contacts. On the other hand, he made clear that population control by government action can be justified, and is becoming more general. He advocated that such policies be approached scientifically and with international good-will.

Political events were taken up in Professor George H. Blakeslee's round table on "Problems of the Pacific," and discussion there was supplemented by two lectures by Dr. C. C. Wu on "The Domestic Program of the Kuomintang" and "The Foreign Program of the Kuomintang," and by a lecture on "The Task of Educating China's Millions for Citizenship" delivered by Dr. Y. C. James Yen. The cultural phases of the Chinese revolution were brought out, as well as the political. Most of the discussion, however, centered upon Sino-Japanese relations and the question of Manchuria. This quickly resolved itself into a clash between "rights" and "vested interests." While it was made clear that neither China nor Japan wants to fight, it became equally clear that no immediate accommodation seems likely. If enough time can pass for popular feeling to cool, it seems probable

that, with the growth in China of really effective government, Japan's vital economic interests can be safeguarded without impairing China's sovereignty.

Four special open conferences on "The Problems of Africa" were conducted at the end of the session by Dr. Raymond L. Buell, of the Foreign Policy Association. These were notable for Dr. Buell's indictment of recent actions by the Firestone Company and the United States Department of State in Liberia. His assertions were vigorously combatted on the spot by Dr. T. Jesse Jones, of the Phelps-Stokes Foundation, and in the public press by the State Department, the President of Liberia, and the Firestone Company.¹

At the close of the session President Garfield, chairman of the Institute, announced that continued financial support had been provided, and that, pending the working out of plans for permanent endowment, the program for next year will be substantially as heretofore. He intimated that some suggestion had been made that the various institutes now in existence coördinate their efforts in bringing speakers from abroad. The feasibility of this suggestion is being studied.

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Reapportionment in California. One of the most perplexing problems facing California today is that of legislative reapportionment. The present constitution provides (Art. IV, Sect. 6) that the state shall be divided into forty senatorial districts and eighty assembly districts "as nearly equal in population as may be and composed of contiguous territory," and that every ten years the legislature, at its first regular session after each national census, shall adjust such districts and reapportion the representation. In other words, the constitution of 1879 makes it mandatory for the legislature to redistrict the state after each federal census. During the past twenty years, however, proper adjustment of legislative representation has been so difficult a problem that the state is still districted on the basis of the 1910 census. The magnitude of the problem is explained partly by the sectional diversities of the state, and partly by the growth of city populations, with the resultant fear in the rural sections of urban domination.

Throughout its history California has been the scene of keen sectional rivalry, and each general state election and each legislative

¹ See pp. 999-1004 below.

session serves but to emphasize this sectional feeling between the northern and the southern parts of the state. At the last election the feeling ran so high as to threaten disruption, and one heard again the burning threats of secession. Southern California is strongly Republican, while northern California sometimes goes Democratic. Southern California opposes legalized horse-racing and legalized gambling on horse races according to what is called "pari-mutuel" wagering, while northern California votes favorably to these practices. Southern California opposes the repeal of the Wright Act, which provides for the enforcement of the Eighteenth Amendment, while northern California favors its repeal. Los Angeles and San Francisco are rivals commercially as well as politically.

The shifting of population that has come with the growth of cities, and especially the unprecedented development of Los Angeles and San Francisco, has intensified sectional differences and thus aggravated the whole problem of reapportionment, until today, if representation were reapportioned according to the constitutional provision of 1879, the political power of the state would be concentrated in the inhabitants of three per cent of the state's area. For today more than one-half of the total population is contained within the counties of Los Angeles, San Francisco, and Alameda. As a result, many feel that the constitutional provision written in 1879, when the concentration of sixty or seventy per cent of the total population of the state in three per cent of its area was not contemplated as a possibility, is no longer applicable; and that population should no longer be the sole basis of representation, but rather some sort of combination of population and territory. The legislature has repeatedly refused to reapportion according to the constitutional provision, since to do so would place a few centers of population in complete control of the process of law-making. Three successive sessions following the 1920 census were deadlocked between conflicting opinions on representation, and every proposal failed.

At the general state election of November 2, 1926, the ballot contained two initiative measures dealing with reapportionment. Proposition Number 20 would have added a section to Article IV of the constitution providing for a reapportionment commission composed of the secretary of state, the attorney-general, and the surveyor-general. Should the legislature fail at the first session after a census to adjust senatorial and assembly districts, the commission was to reapportion

the state; and if the commission should fail to act, the supreme court was to have power by writ of mandamus to compel action.

Proposition Number 28 is commonly spoken of as the "federal plan," because its provisions resemble those of the federal Constitution with respect to representation in the national legislature. The measure would preserve to rural California the control of the senate, while urban California would dominate the assembly. Under this plan the legislature would, following each census, divide the state "into forty senatorial and eighty assembly districts comprising contiguous territory, with assembly districts as equal in population as possible, and no county or city and county containing more than one senatorial district, and no senatorial district comprising more than three counties of small population." It, too, provided for the creation of a reapportionment commission, consisting of the lieutenant-governor, attorney-general, surveyor-general, secretary of state, and superintendent of public instruction, to make reapportionment if the legislature should fail to act. There are fifty-eight counties in the state and forty senators. Under this amendment, the larger counties would each be given one senator; the smaller counties would be grouped; but there would be at least one senator to each three counties. As to how the senatorial districts should be formed, the amendment made no further provision.

The far-reaching effect of these propositions may be illustrated by Los Angeles county, which now has fifteen assemblymen and eight senators. If reapportioned according to population, as provided in the first plan, it would have twenty-one (plus) assemblymen and ten (plus) senators—in other words, one-fourth of the voting strength in both houses. If reapportioned on the basis of the federal plan, it would have twenty-one (plus) assemblymen but only one senator. Or again, take Alameda, Los Angeles, and San Francisco counties, which combined have 200,000 more than half of the population of the state. Reapportioned on the basis of population, they would dominate both houses; but if reapportioned according to the federal plan, they would have only three of the forty senators.

As a result of the state election, the federal plan was adopted by 64,000 majority. However, more than 300,000 voters failed to vote on the question; and though the legislature of 1927 redistricted the state in accordance with the plan (Stats. 1927, ch. 856), a referendum petition prevented the scheme from going into operation unless again adopted by the voters in 1928. For, in July, 1927, Secretary Jordan announced that 77,425 valid signatures had been filed in his office

to refer the plan to the electors, whereas only 57,206 signatures were required. Acting for the farm bureaus and other organizations, and contending that many signatures on the petition had been obtained "fraudulently and illegally," Senator Frank S. Boggs, of Stockton, author of the redistricting law, filed a mandamus suit against the secretary of state to prevent him from certifying as to the sufficiency of the petitions. On May 21, 1928, however, the state supreme court denied the petition; and hence, for a second time, the voters were called upon, at the current November election, to pass upon the question.

Twenty-nine states have already definitely provided against the possibility of virtual disfranchisement of any portion of their area, by setting up a balanced legislature which neither city nor county can dominate. California's decision, under the circumstances described above, has been awaited with an interest not confined to her own bounds.

FRANCES N. AHL.

Glendale, Cal.

BOOK REVIEWS

EDITED BY A. C. HANFORD

Harvard University

Administrative Powers over Persons and Property; a Comparative Survey.

BY ERNST FREUND. (Chicago: University of Chicago Press. Pp. xxi, 620.)

Legislative Functions of National Administrative Authorities. BY JOHN PRESTON COMER. (New York: Columbia University Press. 1927. Pp. 274.)

The series of important books which have recently appeared on various aspects of administration and administrative law fitly culminates in Professor Freund's long expected treatise, published under the auspices of the Commonwealth Fund as a result of an investigation undertaken as chairman of the special committee on administrative law appointed by the Legal Research Committee of that foundation. In most previous books and articles the administrative regulation of private rights has been approached from the angle of judicial review, i.e., of the scope of control exercised by the courts to revise and correct administrative acts. Professor Freund strikes into a long-needed and much more fundamental line of approach. Studies of judicial review are bound to be superficial unless based on adequate analysis of what it is that is judicially reviewed—in other words, an analysis of the nature and distinguishing characteristics of the many different types of administrative action. This essential analysis Professor Freund has performed on an exhaustive and definitive scale. Under our legal system, as he points out, administrative action is practically always a child of statutory creation. Hence, to analyze the different types of administrative action means in substance to classify the various powers conferred by statutes on administrative agencies. What Professor Freund has given us is, therefore, a book of statutory analysis, having a novel and unusual appearance in comparison with the familiar type of legal treatise which proceeds by analysis of cases from the law reports. Here the cases (although more than four hundred are cited) appear as only incidental to the attempt to bring out uniformities and distinctions in the statutory materials.

Professor Freund's method is one of rigorously elaborate classification, resulting in important exclusions from the field of administrative activity selected for treatment. Thus he excludes all administrative powers exercised merely by way of preparing for judicial proceedings or of carrying out judicial mandates, as the powers of service of process, arrest, and execution vested in sheriffs; and similar exclusion applies to administrative powers of purely abstract fact-finding character, such as the authority of the Interstate Commerce Commission to value the railroads. Rule-making powers, or powers of delegated legislation, are also excluded from the general treatment, although one of the most suggestive chapters in the book (Chapter XI) summarizes most of what can be said about this important type of administrative activity. There are thus left for detailed discussion only what Professor Freund calls "determinative" or "ruling" powers, i.e., those which impinge directly on individuals in specific instances, or "from case to case," and produce an immediate effect on the legal rights or status of the individual thus touched. But even from this field important exclusions are made, as of powers exercised inside the governmental organization, such as those connected with appointments, promotions, and removals of public employees. Finally, all administrative determinations made in performing the "service" functions of government are excluded, i.e., all those in the field of public land and pension administration, the postal service, and the supply of water, transportation, and the like. The powers thus left for treatment are those in aid of revenue legislation and police regulation, including the regulation of business in the public interest.

Thus limited in scope, the book falls into two almost equal parts. The second half consists of a summary of statutory provisions which supply the basis for the generalizations presented in the first, or "analytical," part. This statutory material is drawn from the enactments of four jurisdictions—the United States federal government, the state of New York, Great Britain, and Germany—chosen as representative of four different types of administrative organization described in Chapter III. The appropriate statutory material for all four jurisdictions is grouped under each of the following headings: public utilities, merchant shipping, banking, insurance, trade, labor, control of professions, religion, education, political action, safety, health, morals, personal status, use of land, and revenue. This sum-

mary contains a mine of details which should interest students of other than purely administrative questions.

The key to the analytical part of Professor Freund's treatment is apparently the distinction which he draws between "enabling" and "directing" powers. An instance of the first are powers to issue or withhold licenses and permits, while the second is exemplified by administrative orders requiring persons to take or desist from specified action, e.g., the English closing orders against unsanitary dwellings and most of the orders of the Interstate Commerce Commission. Perhaps the most valuable parts of the treatise are the suggestions and comments of a practical character on such subjects as the duration of licenses, the desirability of a hearing before the refusal of a license, the administrative imposition of terms and conditions in connection with granting licenses, and the whole matter of the revocation of licenses. Professor Freund's chief contributions are made as a constructive critic of the statutory policy involved in selecting the form and defining the scope of particular administrative powers designed to effectuate a given result. It is to be regretted that he has not allotted more space to the operation in practice of the novel "variation" provisions of zoning laws and ordinances permitting the administrative authorities to suspend or modify general rules in favor of specific pieces of property.

The central standpoint from which Professor Freund considers the differences between enabling and directing powers is their bearing on the problem of administrative discretion. A chapter (Chapter VI) is devoted to analyzing different degrees of discretion—prudential, mediating, censorial, technical, unqualified, etc. To such discretion in general Professor Freund is not favorable. "The more carefully legislation is worked out, the more marked are the provisions for circumscribing discretion" (p. 70). "If it be asked whether in the exercise of this control [over rates] discretion is preferable to rule, there can be little doubt that this answer should be in the negative" (p. 98). "The function of discretion should be not to displace rule, but to prepare the way for it. On any other terms administrative discretion would be an anomaly. It would mean that administrative authorities are superior to courts in their capacity to deal with private rights, or that under modern conditions the public welfare demands personal government instead of government by law" (p. 102). This attitude seems to proceed from two convictions: on the one hand, Professor Freund apparently believes that discretion as a "political" function should be

properly confined to the legislature (pp. 84, 101); secondly, he apparently has confidence that it is possible in the course of time to develop a rule adapted to practically all of the matters which are proper subjects for administrative regulation. Resort to discretion "appears to have been due to a perception of abuses without a corresponding perception of remedies" (p. 80). "The history of rate-making in England and the United States hardly makes a good showing for the practicability of a mediating administrative discretion; a mere standard of reasonableness will not in the long run be a satisfactory basis for a delegated power to determine the value of services rendered. There seems to be a strong tendency toward replacing this standard by more definite criteria" (p. 84).

From the standpoint of the relative amount of discretion required, Professor Freund apparently favors the use of enabling, as contrasted with directing, powers. "I believe," he writes, "that on the whole there is a trend toward the reduction of discretion in the grant of licensing powers." In view of the permit requirements of the Transportation Act of 1920, this impression is, of course, open to question. However, "the impression of a tendency toward non-discretion rests upon the unmistakable progress toward statutory standardization. Divested of discretion, a system of advance checks is consistent with placing private right entirely on the basis of direct statutory requirement" (pp. 581-582). "It is possible to eliminate discretion from the grant of a license entirely, and enabling powers tend toward routine administration, whereas a directing power is rarely devoid of discretion" (p. 63). "The fact that America and England have adopted the directing power but tardily, and apparently with reluctance, raises the question whether it has a permanent and legitimate place in the legal system" (p. 173).

It seems clear, however, that many of the objects sought to be accomplished by resort to directing powers are either incapable of accomplishment by such an "advance check" as a license, or else that the substitution of the latter for the former method of control in cases where it might be found possible would often mean only a change of form and not of substance. Thus the mere substitution of a permit to raise a railroad rate for an order fixing the rate would hardly of itself eliminate the problem of discretion. Whether or not all governmental discretion can advantageously be monopolized by the legislature raises problems deeper than those which Professor Freund discusses. He recognizes that "if [administrative] discretion

is appropriate to half-developed and imperfectly understood conditions, it is true that such conditions will confront legislation indefinitely" (p. 583), and that presumably to that extent resort to such discretion is permanently inevitable. But may it not also be that resort to discretion rather than rule is in some cases necessary, not merely because questions are not yet understood, but because of the very nature of the questions? Are there not questions which in the interest of public order must be decided by governmental authority, and which are yet permanently incapable of being decided by rule? At least this would seem to be true of many of the questions which have to be decided by law-courts—questions of value, due care, motive. The element of discretion involved in the decision of such questions is often obscured by calling them questions of "fact;" but Professor Freund frankly recognizes that the decision of a question of "fact" is often an exercise of discretion (p. 70). There are doubtless objections enough to leaving the decision of such questions to administrative agencies; but there are often advantages which may be thought compensating. The point is that such questions must be decided by some form of authority; and the problem with which we are confronted is, therefore, not the elimination of discretion, but where discretion is to be vested. This problem cannot be fairly faced on an initial assumption that discretion is of necessity inherently bad, and that all questions can be justly decided by the yard-stick of fixed rules. A more extended consideration of such issues as these will have to be undertaken before a satisfactory theory can be formed of the proper limits of administrative discretion, and consequently of the proper form in which to cast administrative powers. Professor Freund deserves gratitude for insisting on the essential identity of the latter two problems.

Administrative rule-making, or "quasi-legislative" action, which covers the side of administrative activity complementary to the "case-to-case" powers treated by Professor Freund, is the subject of Professor Comer's monograph. His study is limited to the American federal government, and is based on an historical review, drawn from the Statutes at Large, of the "subletting of power" (p. 186) by Congress since 1789. This history, in Professor Comer's opinion, shows that "it is an erroneous supposition that the great mass of administrative legislation now playing such an important part, . . . sprang full-grown out of the complex conditions of modern life . . . Congress has departed all along from its general rule of issuing laws complete in themselves

and effectual without the interposition of some other will than its own" (p. 50).

Professor Comer emphasizes the distinction between such delegation as that involved in *Field v. Clark* (143 U. S. 439), which he calls "contingent legislation," and a mere delegation to provide supplementary rules of detail to carry out the purposes of a statute (p. 26). Most of the many controversies over delegation in the field of tariff legislation have involved delegation of the contingent type. The history of these controversies is very fully given, and Professor Comer points out as to the powers delegated to the President, at least by the more recent acts, that, so far from their being, as claimed by the court in *Field v. Clark*, mere powers to find a fact or facts upon which the statute automatically depends for its operation, they actually leave open to the President "a field where guesses are permissible and politics possible," and where he is accordingly vested with a true legislative discretion. "There is no definitely named and readily ascertained contingent fact which determines [his action]. On the contrary there is interposed between the will of Congress and the consummation of the act of imposing a duty a will that is not the legislature's but that of the President" (p. 79).

The chief issues in connection with the rules and regulations supplying details supplementary to a statute have arisen out of the income tax regulations of the Bureau of Internal Revenue, and Professor Comer summarizes at length the material which has recently become available through Congressional hearings and otherwise concerning the methods of this office (pp. 139-170). The substantially discretionary, and therefore legislative, character of many of these regulations is recognized (p. 143), as well as the opportunity of officials to abuse such discretion (pp. 151-152). The thorny question of the bureau's power to give retroactive effect to its rules is discussed (pp. 164 ff.), and the author sees in the establishment of the Board of Tax Appeals, which is not bound by the rulings of the bureau, a check on these rulings in the interest of the tax-payer more effective than that which is available by resort to the courts.

The most novel and striking part of Professor Comer's study consists of the last two chapters, dealing with what he calls the "political safeguards" surrounding the exercise of administrative rule-making powers. These chapters describe the methods employed, chiefly in the Departments of Agriculture and the Interior, in framing rules and regulations under certain of the statutes which they are called upon to

administer. These methods involve frequent resort to conferences with representatives of the interests affected by the particular statute in question, e.g., with stockmen in connection with the administration of grazing on the forest reserves, with nurserymen in connection with the Plant Quarantine Act, and with the various interests in the cotton and corn trades in connection with the Cotton Futures and Grain Standards Acts. These conferences, which often take the form of public hearings, afford an opportunity for outside opinion to influence administrative legislation no less, though in a more informal manner and less responsibly, than legislation enacted by the regular law-making body. The meaning of "pressure politics" as applied to the latter branch of the law-making process is now fairly well understood. Professor Comer has laid the basis upon which an advance should be made toward understanding the same phenomenon in connection with rule-making by administrative authorities.

JOHN DICKINSON.

Princeton University.

Justice and Administrative Law. BY WILLIAM A. ROBSON. (London: Macmillan & Co. 1928. Pp. xviii, 346.)

Dr. Robson's volume is, as its sub-title indicates, a study of the British constitution, pursued by a method unmistakably British. Referring at the outset to the separation of powers as "legendary," the author rejects that superficial *formal* distinction which defines functions in terms of the class names of the organs functioning. Rather does he attempt, not a perfectly sharp, but a "working," *substantive* differentiation between adjudication and administration for the purposes of his analysis. An interesting chapter is devoted to current English illustrations of the exercise of "judicial" functions, as defined by administrative authorities. The whole discussion seems to hinge upon the assumption—with which the reviewer has long been in agreement—that if administrative tribunals are "judicialized," as Dicey would say, then the latter's case against administrative law largely falls to the ground.

But what does "judicialized" connote? Dr. Robson offers a suggestive description both of the institutional side of the judicial process as it appears in the ordinary courts and of the psychological elements of the "judicial mind." In the light of Mr. John Dewey's instrumental logic, and of what is now known—or thought to be known—about such psychological factors as conditioned reflexes, habit patterns,

mental images, and rationalization, the author's treatment of the "judicial spirit" would be wholly inadequate if we did not remember that for his purposes the vital question is merely whether the English administrative tribunals have the "judicial outlook" of the English judges.

His conclusion seems to be that, in general, they have this outlook. And since "administrative law is law in the making," and therefore has in some spheres advantages over law as administered by the English courts, it follows that the recent rapid development of administrative law in England is not a source for alarm. The writer, however, has some definite and helpful proposals to make for the improvement of the existing system, and concerning the proper powers, organization, personnel, and regulation of administrative tribunals. Political interference he considers a "bogey," so far as England is concerned. There are, however, in his opinion, several real dangers in the English system which should be carefully guarded against.

A chapter is devoted to what are called domestic tribunals—that is, organs of "voluntary" associations, such as trade unions, social clubs, and a host of others, which exercise with reference to their members extensive "judicial" functions with very little interference from the courts. Dr. Robson is strongly of the opinion that the scope of judicial review of their decisions should be increased.

Nowadays, scarcely a book on any phase of political science comes off the press without at least one chapter on "groups" within the state. We have been told of their bringing "pressure" to secure legislation, and of the problems they furnish jurists with respect to the nature of a corporation. Recently Dr. John Preston Comer has given some account of group opinion as influencing the formation of administrative ordinances. We have even heard of a "challenge to sovereignty" on behalf of certain groups. Now comes Dr. Robson to emphasize the fact that these associations exercise important "judicial" functions under English conditions. The problem would be suited to an American doctoral dissertation.

Dr. Robson offers a personal appraisal rather than a piece of technical research. Yet his volume is well-balanced, furnishes a good summary which is suited to the needs of students, and presents illustrations and citations of cases and reports of royal commissions which, it is believed, will aid the specialist.

JAMES HART.

Johns Hopkins University.

Law in the Making. BY CARLETON KEMP ALLEN. (Oxford: Clarendon Press. 1927. Pp. xxiv, 388.)

A General View of European Legal History and Other Papers. BY MUNROE SMITH. (New York: Columbia University Press. 1927. Pp. ix, 446.)

Some Lessons from our Legal History. BY WILLIAM SEARLE HOLDSWORTH. (New York: The Macmillan Company. 1928. Pp. viii, 198.)

Under the title *The Sources of Law*, the substance of Mr. Allen's book formed the Tagore lectures for 1928 in the University of Calcutta. The present title was given to the book in order to emphasize the fact that it is devoted to a discussion, not of the "literary" sources of law, but of the chief materials and processes in society which have gone to make up the general body of law, and especially of English law. The introduction contains a relatively realistic discussion of the problem of "the sovereign as source of law." The author's conclusion is that "there seems to us to be a world of difference between, on the one hand, conceiving a pre-existing unitary sovereign as the source of all law and as a prerequisite to the very existence of law, and, on the other hand, recognizing that in every modern state there must be some ultimate means of enforcing the law which society has developed in the natural process of its growth."

The first two chapters are devoted to a discussion of custom—its nature, origin, interpretation, and application. Chapter III contains an excellent history of the use of "precedents" in Roman law, modern Continental law, and English law; Chapter IV is a summary of the "general rules" now recognized in England as governing the authority and operation of precedents. The fifth chapter is devoted to "Equity;" the sixth to "Legislation;" the seventh to "Subordinate and Autonomic Legislation." The book is well printed and bound, and is equipped with an adequate index.

The author's treatment of his subject is, as a whole, permeated with a sense of the realities which underly the phenomena associated with the word "law." Unfortunately, however, the discussion of the part which judges play in the growth of law is at many points lacking in clearness, and is indeed inconsistent in its statements. Apparently this is due to a belief in the validity of the traditional notions of "logic" prevalent among the legal profession. This appears rather clearly when we are told that "the force and discipline of legal reasoning. . . . have made lawyers a model of that dispassionate think-

ing, clear vision, and nice appreciation of evidence, without which it is impossible to progress far in the orderly conduct of mundane affairs" (p. 72). It seems to the present writer that everyday experience with lawyers shows that as a class they are at least as little given to "dispassionate thinking" and "clear vision" as any other group in the community.

The truth is that the overbalancing majority of lawyers share with most of the members of other "learned" professions an almost complete ignorance of the inquiries into "logic" and human thinking associated with the names of Peirce, James, Dewey, Schutter, Russell, Whitehead, Keynes, Keyser, and many others—studies with which anyone who claims to think "dispassionately" and "clearly" must needs be familiar. So far as the present book evidences, these studies are for the author non-existent; the ideas of "logic," and especially of the nature of "induction," which he seems to hold are apparently derived from the naïve notions of Bacon and the writings of John Stuart Mill. He apparently does not realize that there is today no agreement as to the nature and limitations of what is called "inductive inference;" that eminent writers like Russell and Morris Cohen have asserted that what passes for it is either disguised deduction or else merely more or less methodical guesswork. Apparently the author still thinks of induction as a "logical" process in the sense of Mill, i.e., as a "method of proving the truth of general propositions."

In a similar manner the learned author seems to fail to appreciate the nature of "deductive reasoning" as now understood. For example, he tells us that "there is much to be said for the view that, ideally, every judicial decision should be the direct deduction of rule to fact" (p. 108). In truth, exactly nothing can be said for such a view; the proposition is logically and philosophically impossible. This review is not a place in which the matter can be discussed at length. It must suffice to assert somewhat dogmatically that the facts seem to be that whenever a judicial decision is called for on a state of facts which is novel, i.e., really calls for reflective thinking, no amount of purely "deductive" reasoning can possibly give an answer. In such cases there are always competing generalizations ("rules" or "principles"), either of which is capable of being "applied" *after suitable interpretation*, and one result or the opposite is reached according to which is chosen. The "deduction" can be made only after the judge, for reasons not always disclosed in the opinion, has decided to "apply" one rather than the other of these generalizations. But, *nota bene*, in doing

this the judge has necessarily read into the words in the "rule" or "principle" a meaning not previously there; if he now has the premises of a syllogism from which he can "deduce" his decision, it is because in truth he has made them what they are in order to reach the result in view. But, we are told, the judge uses "induction" in doing this. Note that from a case or series of cases, previously decided, one can by "induction" derive a large number of generalizations (rules or principles) of ever widening scope, any one of which accurately describes the case or cases under consideration. Which of these is *the* "rule" or "principle" established by the cases? What leads the judge to choose one rather than the other? Space fails in which to give the answer.

The author's following of the traditional, confused notions of "logic" leads him to the remarkable view that "in the overwhelming majority of cases where precedent is cited and relied upon, 'the judge's whole effort is to find the law, not to manufacture it. His concern is not with the future effect of the rule he is laying down, but with the application of what he conceives to be an existing rule to a concrete case before him' (p. 173). If all that is meant is that when a trial judge is dealing with a routine case, on all fours with many prior cases—one, therefore, which calls for no real thought after the facts of the case are known—well and good. But apparently this is not what is in mind. In very truth, in any case involving any real doubt as to how it ought to be decided, it is indispensable for the judge to consider the "future effect" of a decision one way or the other if we are to have intelligent judicial decisions. Fortunately, a few judges—Holmes, Cardozo, and Stone, for example—realize this. The future of our legal development depends upon bringing the fact home to the legal profession as a whole.

Professor Hessel E. Yntema has conferred a favor upon us all by collecting and editing the writings of the late Professor Munroe Smith which were scattered through various books and periodicals. It is a source of keen regret that Professor Smith unselfishly devoted so much time and energy to other academic duties that his writings are relatively few in number. In addition to the paper which gives its title to the book, this collection includes, among others, Professor Smith's discussion of the codification of American law, in his papers on state statute and common law, and the series of papers on four German jurists. What he has to say as to the small benefits likely to accrue from codification has a bearing upon the work of the American

Law Institute as now being carried on. "The rules of the law will be made somewhat more accessible," but "it will not be made any more intelligible, nor much more certain; nor will the practice of citing cases be abandoned" (pp. 60-61).

The Vinerian professor of the law of England at Oxford University visited the United States in 1927, primarily to lecture at Northwestern University; and the four lectures here reprinted were delivered at that institution. They bear the titles: "The Importance of Legal History," "The Common Law's Contribution to Political Theory," "The Rule of Law," and "A New Discourse on the Study of the Laws." The lectures, while interesting and well worth reading, add little to the material which the learned author had already given us in other places.

WALTER WHEELER COOK.

Johns Hopkins University.

Federal Health Administration in the United States. BY ROBERT D. LEIGH. (New York: Harper and Brothers. 1927. Pp. 687).

The Problem of Indian Administration. BY LEWIS MERIAM AND ASSOCIATES. Institute for Government Research Studies in Administration. (Baltimore: The Johns Hopkins Press. 1928. Pp. xxii, 872).

The District of Columbia: Its Government and Administration. BY LAURENCE F. SCHMECKEBIER. Institute for Government Research Studies in Administration. (Baltimore: The Johns Hopkins Press. 1928. Pp. xx, 943).

We have here three studies in public administration, each of a distinctive character. One deals with an important general field of public service, carried on by a number of different agencies in the national government, and by more numerous agencies of state and local government. Another deals with a special service of the national government, including, however, the operating field agencies as well as the central organization. The third deals primarily with the local government of the federal district, which, however, involves a good many branches of the national administration.

Professor Leigh uses the term "federal" to include not only the health services of the national government, but the interrelations of national, state, and local health agencies. His opening chapter deals with the evolution of local and state health organization; and in Chapter XV he considers the problem of centralization and decentrali-

zation in this field. On this matter he approves the development of national activities, but urges the need for more effective local agencies to prevent excessive centralization of health work within the states.

But the larger part of his book is given to the national health services, considering the constitutional bases, medical care of merchant seamen, medical care in the army and navy, of the World War veterans, and of "territorials" and other wards, and the development of preventive measures, scientific investigations, and national advisory and educational activities. Two chapters are given to the problem of reorganization of the national health services, for which he favors an executive department of education and health, without, however, including the veterans' bureau and other agencies as in the proposed plan of the Joint Committee on Reorganization. The final chapter deals with the public health personnel problem.

The book is a careful study of the field, of somewhat broader scope than Tobey's *The National Government and Public Health*, though the attention given to state and local agencies is comparatively brief.

The report on Indian administration is the result of an intensive survey made by a staff of specialists selected by the Institute for Government Research, at the request of the secretary of the interior. It goes much more fully into the detailed operation of the Indian service than the series of service monographs of the Institute, involving personal investigation of the field services, and offering definite judgments on the results, with recommendations for improvements. Part I (a fifth of the whole) presents a general summary of findings and recommendations, a foreword to the detailed report covering the origins and methods of the survey, and chapters on a general policy for Indian affairs, the organization of federal Indian work, personnel administration, and statistics and records. Part II gives a more detailed analysis of conditions, in seven sections, dealing with education, health, general economic conditions, family and community life and the activities of women, the migrated Indians, the legal aspects of the Indian problem, and missionary activities among the Indians.

The object of the survey, as set forth by the director of the Institute, has been, not to judge the quality of the work done by the Indian service with the resources at its disposal, but to consider the present conditions in the light of the practicable ideal as to what may be done. On this basis the report begins the general summary of findings with the statement: "An overwhelming majority of the Indians are poor,

even extremely poor, and they are not adjusted to the economic and social system of the dominant white civilization." As to the general character of the government services, it is stated: "The work of the government directed towards the education and advancement of the Indian himself, as distinguished from the control and conservation of his property, is largely ineffective. The chief explanation of the deficiency in this work lies in the fact that the government has not appropriated enough funds to permit the Indian service to employ an adequate personnel properly qualified for the task before it."

Numerous recommendations are made. The first outstanding need is the establishment of a division of planning and development, to formulate programs and develop policies. The second is the enormous strengthening of the personnel in immediate contact with the Indians. For the general improvement of the service, Congress should be asked for an emergency lump sum appropriation of \$5,000,000, to be available for certain designated purposes. No consideration seems to have been given to the proper relation of the Indian service in the general organization of the national administration.

The survey is a comprehensive and intensive study of an important branch of the public service of which too little is known; and the findings and recommendations should receive serious and favorable consideration.

Mr. Schmeckebier's volume on the District of Columbia is also a comprehensive and detailed study of the governmental and administrative machinery operating in the District of Columbia with reference to local affairs. Part I contains six chapters on history and general government, including a discussion of the financial and personnel systems. Part II deals, in 62 chapters, with the organization and operation of the various agencies. Like the service monographs of the Institute, the work is almost wholly descriptive, but another volume is promised presenting suggestions, critical and constructive, in the light of other studies in public administration.

A brief examination of this study, however, is sufficient to show the extreme complexity of the present structural organization. The District is treated in part as a separate political study, and in part as a portion of the administrative branch of the national government. The government of the District is divided among the commissioners of the District of Columbia, and several boards, commissions, or other agencies dealing with District affairs only; a number of agencies of the national government which have control over some District affairs;

other national agencies which have only contractual relations with the District government; and the judiciary.

JOHN A. FAIRLIE.

University of Illinois.

Governmental Reporting in Chicago. BY HERMAN C. BEYLE. (Chicago: University of Chicago Press. 1928. Pp. xxiii, 303).

"The right of the people to govern has been long established; but the corollary of that right, the right to be informed as to the matters which are involved in governing, has not been successfully guaranteed" (p. 6). With this dominant idea, Mr. Beyle attacks the problem of governmental reporting. The purpose of reporting is, first of all, to facilitate a public audit of the conduct of government. Though the author recognizes the importance of reporting as a means of facilitating the work of the controlling executive, the operating administrator, and the policy-determining body, and the service which is rendered also to students of government (p. 8), these phases of reporting are but slightly developed in his study.

As the title indicates, governmental reporting in Chicago is the chief consideration of the book. This is illuminated by a comparison of Chicago reports with a selected body of reports from other cities, including chiefly Boston, Philadelphia, London, Berlin, and a number of American city-manager cities. As a result of this elaborate analysis Mr. Beyle finds that: "About 58 per cent of the local governmental authorities of the Chicago area who might be expected to report did practically no public reporting at all during the three years covered by the investigation. Many of the authorities who did some reporting failed to present types of reports and publications that are highly desirable. . . . Much of the reporting was done with considerable irregularity; much of it was greatly delayed; and most of the reporting was done for periods which were unnecessarily lacking in uniformity. Most of the authorities failed to plan the preparation, the publication, and the distribution of their reports. Very few of the authorities made use of informal media for reporting and of informal approaches to the citizens' interest. Some of the reportorial work, particularly that done by the professional, non-political element in public service, compares favorably with the best governmental reporting elsewhere" (p. xvii).

The author estimates that not less than a quarter of a million dollars is expended annually in the printing of reports in the Chicago area, or a little less than nine cents per capita for the population of

the city. The average number of pages per year is about 20,000. Though Mr. Beyle has very little defense to offer for the present reports, he believes that nine cents per capita is not too much to pay for good reporting, if it is worth over twenty-seven cents per capita for the city to provide for a single city election (p. 52).

Following the detailed description and criticism of public reporting in the Chicago area will be found a list of "tentative conclusions as to what constitutes good reporting practice." These conclusions are brought together in very general terms in the seven pages preceding Chapter I, and again in somewhat more specific form in the last thirteen pages of Chapter VII. For example, twenty-four numbered recommendations are offered with regard to the presentation and subject-matter of reports, such as: "authorities should omit from their reports such information as serves no valid or important purpose;" "reports should contain adequate, exact, and, where possible, standardized classification of data;" "reports should contain needed tables of contents, indexes, marginal notation, headings, cross references, serial numbers, and lists of reports and publications;" and "governmental officials, in preparing the text of their reports, should adhere to all those principles of rhetoric which conduce to accuracy and clear expression." Of these recommendations, eleven are more or less specific, thirteen are rather indefinite, and fourteen are repetitions. In his final pages, Mr. Beyle projects two further avenues of study; the first to determine what a model report of a given governmental activity should contain, especially in the way of quantitative measurements, and the second, an analysis of political interest to determine the most effective methods of commanding citizen interest through reporting.

Though Boston is placed by Mr. Beyle at the head of American cities in the scope and character of its public reporting, New York City came very near to earning this position under the Mitchell administration. For a number of years leading up to the war, the New York Bureau of Municipal Research devoted extensive attention to the subject of public reporting. Analyses were made of all of the departmental and governmental reports very much along the lines of Mr. Beyle's Chicago study; model dummy reports were prepared for the more important departments; and plans were made for the introduction of administrative records which would produce the necessary information to fill in these reports. The work was done with full official backing. The failure of the program, with the return to administrative medie-

valism under Hyman and happy-go-lucky opportunism under his successor, has been a great disappointment. No one of these studies or reports was published, though conclusions drawn from them were carried into magazine articles and books, and the work seems to have escaped the attention of most political scientists.

Mr. Beyle's book is written around a logical and comprehensive outline. It contains two summaries, fore and aft; an extended table of contents; a full index; an annotated bibliography; innumerable illustrations, charts, and maps; two appendices dealing with Chicago reporting; copious footnotes; and running section heads. These excellent features of book-making are marred by the fact that the outline is too obtrusive and watertight; one has the feeling that material is repeated from section to section. Most of the photographs of city reports are illegible in the reduced size presented. One appears three times (frontispiece, pp. 48 and 52). Chart V, a cross-classification table with 645 squares, of which only 40 are used, would seem superfluous. Much other material in the text might better have been placed in the appendix, or omitted altogether. The excessive footnoting is pedantic (for example, an identical reference to three separate works is reprinted three times at the bottom of page 218, and a similar repetition appears four times at the bottom of page 239). The author does not follow his own rules with regard to tables, omitting titles in some cases (pp. 235, 238), and permitting the same word to appear at the head of many columns in the same table (Tables VII, VIII, and IX).

The great strength of this book lies in the tireless ingenuity which has been applied to the study of 60,000 pages of Chicago's public reporting. Its weakness lies in its great attention to superficial details without either a treatment of the philosophical assumptions on behalf of the student of government or a compensating grasp of practical material into which the public administrator can sink his teeth. The author has taken too many fine strokes with a monster brush, but he has finished one task that no one will ever have to tackle again.

Those who venture further in the study of public reporting must remember, as does Mr. Beyle most of the time, that reporting is not the end of government. The work comes first. The report is a mirror of that work, and while it is desirable to consider the kind and smoothness of the glass, the thickness of the silvering, and even the frame, we cannot deal with the objects seen in the glass without holding eternally before us the fact that these realities are in another world.

They do not belong in the categories of reporting, but in the categories of work and organization. Is it not true, also, that progress in reporting must come from the bottom up? Must we not begin with a very good report for a very well managed department of a very specific city? For this reason, it is to be doubted whether anything more important in this direction is now being undertaken than the work of the National Committee on Municipal Standards, which has set out to develop measurements of government service. And it is to be noted that this experienced group of specialists is beginning, not above the housetops with an aëroplane, but literally in the gutters with a micrometer.

LUTHER GULICK.

National Institute of Public Administration.

State and Federal Corrupt-Practices Legislation. By EARL R. SIKES. (Durham: Duke University Press. 1928. Pp. 321).

"It is the purpose of this study," writes the author, "to make a survey of the corrupt-practices legislation which has been enacted in the United States by both the state and federal governments, and to examine the construction placed on these statutes by judicial interpretation." With commendable thoroughness this purpose has been achieved. The numerous cases have been studied and digested, and the statutes themselves have been carefully analyzed and conveniently grouped in the thirty-four pages of tables to be found in the Appendix.

However, despite the purely legalistic purpose of the author, an attempt is made throughout the volume to venture opinions about the practical workings of corrupt-practices legislation. That is to say, the author, in effect, essays the rôle of one who has investigated the practical workings of this type of legislation, even though in the Introduction he has limited himself to the purely legalistic aspects. In so wandering afield, he has detracted a great deal from his excellent legal researches. For instance, following a very good discussion of the laws against bribery, one finds a paragraph (p. 35) dealing with the practical results of the laws against this form of corrupt practice, which is not based on any careful study made by the author, but which nevertheless charges that "bribery at elections still continues on a large scale." Again, after a good chapter devoted to "fraud," the author summarizes the legal side in one sentence (p. 90) and uses the remainder of a long paragraph to refer to purely practical matters which he admittedly has not placed within the purview of his study.

There was need for a study of the laws and court decisions dealing with corrupt-practices legislation, and this need has been met by the author of this volume. There is a greater need, in the opinion of the reviewer, for a study of the practical workings of our laws against corruption. Law and practice do not always coincide, and this volume demonstrates how unwise it is to treat both law and practice without devoting at least as much hard research to the practice as to the law and its interpretation.

Chapter VI contains a good discussion of the power of the federal government over elections. But one wonders why it was necessary to write large portions of Chapters V and VII, since many of the subjects there dealt with have previously been treated. In the light of the information of recent date placed in these two chapters, footnote 98 on page 149 and the second paragraph on page 293 are hardly understandable.

One must dissent from the author's opinion (p. 224) that "the federal corrupt-practices act of 1925 provides probably about all the regulation of elections that the federal government should attempt at the present time." I do not know of any thoughtful student of the subject who is so completely satisfied. A complete overhauling of the existing laws is a matter of urgent public importance, and one of the essential points in improving our corrupt-practices acts, namely, making it worth somebody's while to enforce them, has been brushed aside as "unsound."

Thus, objections can be raised to the author's opinions. But in almost every case where objection can be taken, he has wandered from his legalistic and juristic field to the plane of practical politics. When he sticks to his expressed purpose, he is sound. When he brings in the practical phases of the subject, he is usually platitudinous or unconvincing.

The fact remains, nevertheless, that this book is a useful compilation and analysis of the laws and decisions relating to corrupt practices in elections. It is merely regrettable that its value has been lessened by casual excursions into the practical phases of political corruption.

University of Michigan.

JAMES K. POLLOCK, JR.

The Native Problem in Africa. BY RAYMOND L. BUELL. (New York: The Macmillan Company. 1928. Two volumes. Pp. 2,144.)

As an encyclopedia of native conditions in Africa, Dr. Buell's huge volumes of over two thousand pages and approximately one million

words deserve the appreciation of all who are interested in Africa and Africans. The acquaintance with Africa which Americans and many Europeans have is unfortunately limited to vague ideas of wild beasts and to fantastic notions of savage peoples and repulsive jungles. During his fifteen months of travel in Africa and about the same amount of time devoted to reading, conferring, and compiling, the author has evidently worked with unusual diligence. The task undertaken by one individual is almost unbelievable, both in extent and complexity.

"The purpose of this report," according to the preface, "is to set forth the problems which have arisen out of the impact of a primitive people with an industrial civilization, and to show how and to what extent these problems are being solved by the governments concerned." If this purpose were limited to one group of primitive people and to their relations with one European nation, the task would seem possible for one student within a period of two and one-half years. But this report endeavors to present and pass judgment upon the problems of almost the whole of Africa, south of the Sahara desert, including almost seventy million people and twenty-five colonies and countries, with all their varieties both of native people and of foreign representatives of commerce, missions, and government. The extensive list of topics on which the author has presented information and opinions for most of these colonies include the history of conquest and development, some geography and ethnology, land tenure, labor policy, taxation and expenditures, imports and exports, administrative systems, missions, education, agriculture and forestry, health and sanitation, military requirements, and native revolts.

To this comprehensive and perplexing task the author applied the money and the energy at his command with remarkable enthusiasm and conscientious effort to be fair and impartial. But one cannot help wondering whether such an undertaking is humanly possible for one person within the comparatively brief time used in the study. Is there not danger of superficiality in the presentation of the facts and of artificiality in the opinions and judgments pronounced? What does a careful study of the books reveal to one who has some acquaintance with the countries and the peoples discussed?

The merits of the study are numerous and real. As an encyclopedia of facts almost unknown to American and European readers, these books have undoubted value. The author has culled his information from a great mass of documents, books, and testimonies which would have appalled many students of African affairs. The variety of topics

is surprisingly comprehensive. As a rule, the varying points of view and the progress of events are faithfully recorded. The maps are excellent. The foot-notes and references are a valuable assembly of the most important documents that have appeared on African conditions and policies. Appendix L is an especially useful collection of statistical tables of facts concerning Africa and Africans. The bibliography of sixty-seven pages lists the best available books, documents, and periodicals relating to each of the countries from South Africa to Liberia. An index of fifty-two pages enables the reader to find the topics in which he is specially interested. Despite the necessarily factual character of the volumes, the author has been remarkably successful in vivid and interesting presentation. All these worth-while qualities will long command the gratitude of the students of Africa for the generosity of the Bureau of International Research at Harvard, and for the arduous toil and skillful compilation of Dr. Buell.

Had the author been content to be an encyclopedist, he could have made his work still more valuable, and could have avoided the impossible task of expressing opinions, passing judgments, and offering recommendations which are beyond the capacity of any one individual, however wise and industrious he may be. Even as an encyclopedia, the report has very unfortunately omitted some very important data which are essential to an accurate account of conditions in several of the countries. A notable illustration of such inadequate presentation is that of native education in the Union of South Africa.

It is impossible to understand the present status and future possibilities of South African natives without an accurate appreciation of the notable educational provisions as well as the remarkable progress of the native people through education in the Union. Though the native school facilities in South Africa, especially in Cape Colony and Natal, are superior to those in all other countries discussed, the author devotes only a scant three pages to a bare outline of these schools. The inadequacy of this account is further emphasized by the allotment of the remaining ten pages of the chapter to native organizations of varying importance, including almost two pages to "the Israelite movement," a fanatical outbreak, very temporary and limited as to number of natives involved, and discredited by the intelligent natives of the Union. Another unfortunate oversight is the complete omission of any reference to the educational expenditures of Southern Rhodesia, where missions and government are rendering an educational service that ranks among the best in Africa. Even in the Gold Coast section, the

facts include no mention of the Basle mission school system now conducted by the Scotch Presbyterians, and possibly the most effective system of schools in all tropical colonies.

While the author's work reveals a genuine effort to be impartial, his avowed purpose "to set forth problems" has impelled him to over-emphasis in some cases and under-emphasis in others. Herein is probably the outstanding defect of the report. Herein, too, is probably the explanation of many of the objections which several of the governments have expressed against the author's judgments and recommendations. To make clear the nature of these defects, it seems desirable to present some illustrations.

To Americans the section on Liberia is of especial interest. As in all sections of the volumes, the author has assembled much information. While, however, the documentary evidence is most valuable, his observations on Liberian conditions as he saw them are often misleading. This is especially true of some of his comments on education. But the most striking illustrations of hasty judgment are his comments on the American State Department, the American financial adviser, and the Firestone development. Had Dr. Buell realized the decades of conscientious thought devoted by our State Department to efforts in behalf of Liberia, he would not have written: "It is impossible for the writer to believe that the State Department of the United States would consciously trade the diplomatic support of this country for concessions to American capital, especially when these concessions, while highly advantageous to American interests, are unfavorable to Liberia and may lead to the organized exploitation of the aboriginal population." On the same concessions, President King, addressing the Liberian legislature, reflects his more intimate knowledge of his country and his people, when he declared: "The participation of safe and responsible American capital in the economic development of Liberia is indeed a phase of our foreign policy not built on abstractions. It is the result of a practicable conception of our national interest arising out of the unshakable belief of all Liberian administrations that the government and the peoples of the United States of America sincerely desire to see Liberia's independence maintained." On the basis of ten years' experience in various coöperative efforts in behalf of Liberia, the reviewer is convinced that our State Department has conducted Liberian negotiations with wisdom and a genuine regard for the best interest of the Liberian people. President King is right. Years of negotiations and experiments have convinced him and the State Department and the

long-time students of Liberian affairs that the Firestone developments constitute the best available arrangement to lift Liberia from the hopeless economic condition in which the country has been for decades.

The author's most pronounced fears and pessimism relate to the entrance of white settlers and industrialists into Africa. Every student recognizes the unfortunate basis for these fears. The antagonism of selfishness and human altruism is evident in every continent. The dangers of economic exploitation of country and labor are, of course, greatly emphasized among primitive people, unaccustomed to the ways of an industrial age. Had the author been content to present the facts, he would have avoided the charges of sweeping generalizations and of recommendations to governments, as if they had never given thought to the dangers of economic exploitation. To the British government, whose earnest endeavors to protect the natives and their land are proved by the author's own facts, he sounds this emphatic warning: "But the world should hold the British government strictly responsible if, having the example of South Africa, it should blindly encourage European immigration and the alienation of lands, thus bankrupting existing European enterprise and still further impairing the native population." Who more than the British, as the author's facts repeatedly show, are honestly struggling for the "dual mandate" of rights for the natives and a reasonable service to civilization?

Even South Africa is not without hope when the experience of the United States with slavery is recalled. There are in South Africa the same forces for justice as ultimately overcame slavery in our own country. Influential leaders among both Dutch and British are protesting against the present errors and injustices. The joint native councils of white and native peoples are actively urging and demanding the economic and political rights of the natives. Above all, native education, which has long been superior to that in all other parts of Africa, is becoming still more effective and thus preparing the natives to state their own case and insist upon their rights.

But all of these forces are overlooked or discounted by Dr. Buell. Even the almost miraculous progress and present status of the negroes in the United States seem to him to be "outweighed by the disabilities imposed upon them by the white people of America." Such pessimism is amazingly strange to those who realize the present status of the American negroes in economic position, in vigor of health, in education and culture, and even "in political and social advancement." The situation in South Africa is, of course, far more difficult. Such dis-

criminations as the "color bar law" are most serious. But the sound procedure for any foreign visitor would seem to be to state the facts and avoid judgments and prophecies on limited observations and experiences.

The chief value of Dr. Buell's contribution is, therefore, that of an encyclopedia of facts concerning Africa. For this he deserves the appreciation of all who are interested in Africa. Unfortunately, even the encyclopedic value has been somewhat marred by his determination to outline problems rather than to compile facts.

Phelps-Stokes Foundation.

THOMAS JESSE JONES.

The Responsibility of States in International Law. BY CLYDE EAGLETON.
(New York: New York University Press. 1928. Pp. 227.)

The subject-matter of this work covers a field of instant importance in the discussions now proceeding looking toward the clarification of leading international problems. This is illustrated by the fact that the codification committee of the League of Nations has recently submitted the report of its sub-committee dealing with the subject, and that the "Research in International Law," conducted under the auspices of the faculty of the Harvard Law School, is engaged in its study, Professor Eagleton being one of the advisers.

While some French treatises dealing more or less with the general title have appeared, until the publication of Professor Eagleton's book there was nothing of real importance devoted to it exclusively, although Professor Borchard's *Diplomatic Protection of Citizens Abroad* dealt with one of its broad phases. Professor Eagleton may therefore feel that from the text-book point of view he has largely broken new ground. We may add that he has done this excellently, and has produced a work of value alike to the professor of international law and the lawyer interested in prosecuting or defending international claims.

The work opens with a treatment of the sources, foundation, and historical aspects of the subject. We are pleased to note in this connection that Professor Eagleton is not dazzled by the conception of national sovereignty which has blinded so many authors. One can sympathize with him in saying that "an absolute and irresponsible sovereignty, the final judge of its own acts, is in international relations merely a figment of the imagination, logically impossible in the face of the facts of practice, though its dead branches yet ramify throughout

the entire field of international law, badly hampering its growth" (p. 11).

Professor Eagleton discusses at some length differences of responsibility between the controlling state and jurisdictions subordinate in any respect, such as protected states, component parts of the British Empire, etc. He concludes that "the mere title to be called an independent state, though backed by such formal evidences as recognition, or the exercise of the so-called attributes of sovereignty, does not necessarily serve to locate responsibility" (p. 42). He considers at length, and with a wealth of citation, what constitutes state agency and responsibility for the acts of agents. He believes that "when an agent of the state acts within the authority conferred upon him by law, he is manifesting, by virtue of this law, the will of his state; and his act becomes the act of the state itself, bringing responsibility upon the state."

Responsibility for the acts of individuals receives ample attention, and the author then turns to the necessity of application for local redress. The ordinary rule requiring an injured foreigner to resort first to local tribunals for relief, before seeking protection or relief through his government, Professor Eagleton regards "in the present theory of international organization of fundamental and essential value" (p. 100). He points out, however, that "if the rule of local redress, which represents the independence of states, is to be respected, a strengthening of the [judicial] agencies within the state is needed." Of course, in this connection the Calvo doctrine comes in for large discussion.

Responsibility of the state for acts of mobs and insurrectionists receives appropriate attention. In the opinion of the reviewer, the author is absolutely correct in saying that "acts of insurgents, like acts of individuals, are not primarily attributable to the state; and they can be attributed to the state only if the latter has failed in its duties" (p. 148).

Professor Eagleton discusses liability for contractual claims. Space prohibits our development of his ideas. We refer to his well-supported idea that bonds are not to be in an excepted class as to responsibility. It may be believed that the hesitation in taking jurisdiction over bond claims manifested by some arbitral tribunals has not been justified. Next follows an examination into the measure of reparation, a topic which might to advantage have been expanded.

One of the author's conclusions is that as to the question of responsibility there is need of a "clearer statement of the rules of international

law, a more precise definition of what obligations the state has under the law" (p. 218). This work will go a long way toward assisting in the solution of the problem.

The author appears to support Professor Moon's thesis (*Imperialism and World Politics*) that future interventions in the internal affairs of a country should not be undertaken by one nation alone, but should, if undertaken at all, be the joint action of a large group of the nations interested in the maintenance of international law. In securing the development of the law of nations he counts much upon the League and the Permanent Court of International Justice.

JACKSON RALSTON.

Palo Alto, California.

State, Sovereignty, and International Law. BY JOHANNES MATTERN.
(Baltimore: The Johns Hopkins Press. 1928. Pp. xix, 200.)

This little volume consists of a review of the leading theories advanced in the past concerning the nature of the state and of sovereignty, a review of recent criticism of the juristic conception of the state, and an attempt to estimate tentatively the value of both the juristic conception of the state and of the criticism of that theory. The treatment is calm, in spite of the controversial character of the subject—except where Mr. Laski is quoted—and not without flashes of humor.

The reviewer would be insincere if he did not comment strongly on two or three aspects of the treatment which Dr. Mattern gives to the Austinian theory. He is merely repeating here what he has said more fully in Chapter XIV of the third edition of his *International Organization* and in the April, 1925, number of the *American Journal of International Law*. He feels that it should be asserted very much more vigorously than Dr. Mattern is inclined to assert it, that any doctrine of state, sovereignty, or law which attempts to ignore the international field, or which divorces it from the constitutional field, or holds that international law is not law or legally binding, while all the nations of the world hold that it is, has something of the ridiculous about it. He feels that the possibility of reconciling international law with the juristic conception of the state is unfairly overlooked or neglected by Dr. Mattern, as by the Austinians generally, both as regards the preceding point and as regards the reconciliation of state sovereignty and international authority. Finally, he feels that Dr. Mattern should appreciate the fact that the doctrine of the supremacy of international law over national law is not a novel doctrine of some Austinian jurists,

or one which had to await the appearance of the League of Nations in order to secure validity. John Marshall recognized it as early as 1815, and all soundly scientific, i.e., empirical or inductive, students of jurisprudence have seen it for decades—ever since international law has been invoked to penalize nations in claims or other arbitrations, in spite of their national laws or official acts. Dr. Mattern, it is to be hoped, will rework his critique of the juristic conception of the state—which, he and the reviewer agree, seems to constitute the only sound theory of the modern state—with the facts of life in mind.

University of Wisconsin.

PITMAN B. POTTER.

The League of Nations: A Chapter in World Politics. BY JOHN SPENCER BASSETT. (New York: Longmans Green and Company. 1928. Pp. ix, 415.)

We have here what might be called a study of certain phases of the League of Nations from the point of view of an historian of world politics whose untimely death occurred before the publication of the book. Relatively little attention is given to the structure of the League or its detailed non-political activities, or to the Permanent Court of International Justice and the International Labor Organization. The League is studied on its political side by reference to the various meetings of the Assembly, particularly the first, second, and seventh, and by reference to certain outstanding incidents (Aaland Islands, Vilna, Silesia, Corfu, etc.). The volume closes with chapters treating of Germany's entrance into the League, the relations between the United States and the League, and the probable future of the League.

It seems to the reviewer that certain unmistakable errors have been committed. It seems clearly wrong to declare that "the Assembly is the law-making body of the League." It seems, after Mr. Colcord's study, quite impossible to declare that in 1920 "an effective majority of the people had voted that the United States should not join the League." It also seems to the reviewer that the corporate and internationally socialized character of the League is exaggerated by the author. Granted that this may come in time, it remains true that the League is still today, mainly, not a superstate or a unitary state, but an inter-state league; and, this being true, the disparities of interest and power among the component states must and should be considered. In fact, there occur throughout the volume comments and judgments which appear to be inspired by thoughts of a unified world and a unified

world-government, rather than by a deference to the facts of the present world.

What those facts are is abundantly and very helpfully shown in most of the chapters of the book, particularly in the chapters on the Second Assembly, the Third Assembly, and the events surrounding Germany's entrance into the League. Pro-Leaguers who ignore the real facts of international politics would do well to take them to heart. The conclusion which seems indicated is, not that the League is of no value, as anti-Leaguers contend, nor that it is perfect, as some of its friends contend, nor yet that it ought to erase competitive politics on the part of the Great Powers, as the author of the book suggests, but that it is a very necessary piece of machinery for, if possible, restraining those Powers.

PITMAN B. POTTER.

University of Wisconsin.

Papers Relating to the Foreign Relations of the United States. 1914 Supplement: The World War. BY THE DEPARTMENT OF STATE. (Washington: Government Printing Office. 1928. Pp. cccix, 862.)

Edited under the supervision of the brilliant chief of the division of publications, Dr. Tyler Dennett, and his able assistant, Dr. Joseph V. Fuller, this volume is unusually well done. The ordinary method of grouping papers by countries has been departed from, and a topical arrangement, much more satisfying to the research student and much more revealing of the significance of the documents, has been substituted. The classification resolves itself generally into five principal groups: first, the immediate pre-war correspondence relating to the negotiation of the Bryan peace treaties; second, the papers relating to the outbreak and spread of the war, and including especially the various projects of American good offices and mediation; third, the papers relating to neutral rights, including such matters as the recognition of the Declaration of London, contraband, embargoes, mined areas, transfers of flag, censorship of the cables and mails, the problem of conversion, etc.; fourth, the papers relating to neutral duties, including the neutrality proclamations, the problem of reservists, loans to belligerent governments, internment, hovering, etc.; and fifth, papers relating to a miscellaneous group of problems and responsibilities, such as the passport problem, representation of belligerent governments in enemy countries, activities on behalf of prisoners of war and interned civilians, the work of Belgian Relief and of the Red Cross, etc. The papers are

arranged chronologically within each group, and preceding them all, as a sort of introductory text, is the correspondence between Secretary Bryan and Senator Stone, in which the secretary of state reviewed in summary fashion, for the Senate committee on foreign relations, the maintenance of neutrality by the United States in 1914.

Dr. Dennett has written a preface to the volume that is of exceptional value and importance. In it he explains the principles of selection and editing of the State Department documents in the *Foreign Relations* series, and includes as part of such explanation Secretary Kellogg's instruction of March 26, 1925 (the reviewer suspects that it may have been inspired by Dr. Dennett himself), which forms an admirable guide for the editing of the general volumes. Dr. Dennett explains also the special principles followed in the preparation of these supplemental war volumes, and notes particularly the principles governing the omission of material, since it has been found impracticable to publish every scrap of correspondence. Indeed it is admitted that whole files, as well as scraps, have been omitted. Such omitted material falls roughly into three groups: (1) papers that involve no important questions of policy or international law, such as the repatriation of American citizens stranded in Europe at the outbreak of the war and the placing of military observers with the belligerent forces; (2) papers dealing with issues in which policies of the American government or interests of American citizens were not directly involved, such as the activities of the United States as the representative of various belligerent governments in the enemy countries; (3) papers dealing with problems of international law that raised no new issues, but were settled according to previously determined principles or were dropped because the facts were found not to be as first represented. Wherever such omitted material has been published elsewhere, however, reference is made to the publication concerned, and deletions are carefully noted.

The hundreds of papers are listed, both by topics and by countries, and are chronologically arranged within each list. There is also an adequate index. With this volume as a standard, the student of government and diplomacy will look forward to the succeeding volumes, which we are assured are well under way.

CLARENCE A. BERDAHL.

University of Illinois.

Oriental Exclusion: The effect of American Immigration Laws, Regulations, and Judicial Decisions upon the Chinese and Japanese on the

American Pacific Coast. By R. D. McKENZIE. (Chicago: The University of Chicago Press. 1928. Pp. viii, 200.)

Residential Orientals on the American Pacific Coast; Their Legal and Economic Status. By ELIOT G. MEARS. (Chicago: The University of Chicago Press. 1928. Pp. xvi, 545.)

Mr. McKenzie has written a worth-while study of the administration of our immigration laws in so far as they affect Chinese and Japanese. For some reason, he pays a good deal more attention to the treatment of Chinese than of Japanese, probably because of the absence of data in regard to the latter class, which was placed under our own supervision only in 1924. He shows the hardships imposed upon Chinese entering this country, some of whom are held in detention at American ports for six to eighteen months. If the Japanese should be subjected to similar treatment as a result of the 1924 act, the international consequences might indeed be grave. In future years a unified China may join with an indignant Japan in a vigorous protest against the system of exclusion as practiced by the United States. The book might have been strengthened by quotations from the Japanese press and from the annual address of the government to the Diet on foreign affairs, setting forth Japanese sentiment toward exclusion.

For some reason, the American government interprets the term "merchant" as applied to the Chinese to include domestic as well as international traders. But as applied to the Japanese the term "merchant" is restricted to international traders. The immigration laws prohibit both Chinese and Japanese citizens of the United States from bringing their alien wives to reside in this country, although an alien merchant of the same race has this privilege.

Mr. McKenzie states that the effect of the act of 1924 was to cause a business depression among the Japanese business communities on the Pacific Coast; a rapid development of Japanese language schools; a decline in anti-Japanese sentiment; and increased immigration from Mexico. He does not believe that the act had any material effect on trade between the United States and the Orient.

The Institute of Pacific Relations or some other body might make an important contribution if it were to undertake a study, not only of immigration legislation, but also of its administration in all the leading immigrant-receiving countries in the world, in an effort to devise a system of administration which, while enforcing the principle of restriction in accordance with the wishes of the legislative body concerned,

would also subject the individual applicant to as little inconvenience as possible.

Mr. Mears has made a study of the legal and social status of Orientals on the Pacific Coast. Several hundred pages analyze the anti-alien land, naturalization and other restrictive laws, covering fairly well-known ground. The activities of Orientals in mining, manufacturing, agriculture, trade, and domestic and personal service are then discussed. The last hundred pages consist of valuable tables and documents. Mr. Mears has done an immense amount of work upon this study and has made use of the case documents of the Survey of Race Relations. Nevertheless, his book suffers from indigestion. Nearly every page contains long quotations from documents or writers, and the material is not closely enough knit together. As a source-book of material, it is, however, valuable. Both books are an important contribution to the Oriental-American problem.

RAYMOND L. BUELL.

Foreign Policy Association.

The Supreme Court of the United States; Its Foundations, Methods, and Achievements: An Interpretation. [BY CHARLES EVANS HUGHES (New York: Columbia University Press. Pp. 269.)]

This volume constitutes a notable addition to the distinguished series of lectures which have been delivered at Columbia University on the Blumenthal Foundation. The fact that the author was an associate justice on the Supreme Court for six years is likely, however, to create an erroneous impression of the scope and content of the book. The reader who expects a garrulous and gossipy recital of confidential information as to the Court and its work is doomed to disappointment. He will find, on the contrary, a prudent, restrained, and rather conventional discussion. It is accurate, lucid, and suggestive, but it carries virtually no surface indication of the intimacy with which Mr. Hughes knows what he is writing about.

There are six chapters in all. The first presents the historical background of the Court and analyzes the fundamental principles governing the exercise of judicial power. The third and fourth chapters, entitled "Cementing the Union" and "The Nation and the States," are essentially compact summaries of the leading constitutional decisions upon the topics under discussion. Our chief interest centers in the three remaining chapters. The second deals with "The Court at Work," and gives a judicious and informing account of how the Court handles cases

in conference, and of the influence which individual justices may exert. In all this Mr. Hughes assures us, however, that he is not violating any confidences gained while serving on the Court. The last two chapters are devoted to "Liberty, Property and Social Justice." Here are reviewed, without criticism or constructive comment, the leading due process cases, as well as those relating to the various guarantees of the bill of rights. Mr. Hughes' general method is to match the reactionary decisions against the more liberal ones, to show the fluctuations in attitude toward social legislation from time to time and from justice to justice. The impression which he quite obviously seeks to make is that in dealing with these problems the Court succeeds, on the whole, in preserving an attitude which is fairly objective and free from prejudice.

It is certainly not surprising to find Mr. Hughes opposed to any interference with the methods of the Court or the scope of its authority. He defends the theory and practice of judicial review, and deprecates any attempt to prevent five-to-four decisions invalidating statutes, or any provision for the rendering of advisory opinions by the Court. The book is written in Mr. Hughes' clear, compact style. It is a thoroughly interesting and valuable book for student and general reader alike.

ROBERT E. CUSHMAN.

Cornell University.

Pressure Politics: The Story of the Anti-Saloon League. BY PETER H. ODEGARD. (New York: Columbia University Press. 1928. Pp. x, 299.)

When a reviewer finds himself confronted with a volume which represents "partial fulfillment of the requirements for the Ph.D. degree" he at once asks himself, "Will this prove to be a book or just a thesis?" In the case of Mr. Odegard's work—I believe a recent thesis—his mind is very soon set at rest. It is a book, not just a thesis.

Pressure Politics will appeal to two groups of political scientists: the pluralist tracking down the activity of interest-groups, and the student of practical politics replenishing his arsenal of case material. Only two classes of readers will find the book distasteful: those to whom the Anti-Saloon League and its prohibition allies are all black, and those to whom they appear all white with gilt edges. For, as to this organization—to which Mr. Odegard confines himself pretty closely—it is the point of the book that it was led by honest and sincere (if

sometimes unscrupulous) men, men of great political wit (perhaps therefore sometimes unscrupulous), men backed by a very substantial following of white, Protestant, American voters, male and female.

Not that *Pressure Politics* is in any sense a whitewashing of the League. Its propaganda methods are amply demonstrated to be hysterical, crude, and far-fetched. But this is as much a reflection on the level of American political intelligence as on the League. Its unscrupulousness in bringing pressure to bear is documented, point by point, in many examples. Here, however, the evidence, direct and indirect, shows plainly how the stage was set for corruption by "wet" tactics and wealth, by the devious and irresponsible machinery of American representative government, and by the combined apathy and docility of the American voter. Nor are indictments lacking against money-changers in the very temple of the prohibition movement. All this is set forth in rich detail, with many source quotations and statistical tables.

The conclusion that the reviewer has drawn from the book is, not that the Leaguers are either a band of fools and knaves or yet a flock of angels, nor that prohibition is either right or wrong, but that it is a great pity that any issue must be decided on the plane of the prohibition contest. The basic criticism implicit in the book is a criticism of American political life.

PAUL LEWINSON.

Ohio State University.

Recent Theories of Citizenship in its Relation to Government. BY CARL BRINKMANN. (New Haven: Yale University Press. 1927. Pp. vi, 126.)

These four essays are the Dodge Lectures delivered by Professor Brinkmann at Yale University in the spring of 1926. If they compare unfavorably with the popular clarity of some of their predecessors, like Elihu Root's *The Citizen's Part in Government*, they are in no way their inferiors in profundity of analysis. In fact, they presuppose the intellectual gourmandry of a mind enjoying the elaborate make-up of ideas which has become the fashion in Germany of late.

The essays deal with "The Citizen and the Subject," "The Metaphysical State," "The Pluralistic State," and "International Citizenship." In all of them Brinkmann hopes to present "a realist conception of citizenship." Such realist conception will, he expects, "reconcile the natural and traditional elements [of citizenship] with the abstract and

rational postulates of democracy." This reconciliation of the two elements of citizenship *within* the modern state is attempted primarily in the first essay, which contrasts the democratic concept of the citizen with the autocratic concept of the subject. The discussion of the historical background from which these conflicting concepts arose reveals Mr. Brinkmann's remarkable ability to focus relevant facts for the purpose of elucidating intricate combinations of theory. He proves himself a learned pupil of Max Weber, capable of carrying on social research by the methods suggested by that great sociologist. By attempting to render this method of approach in English, these four essays are of outstanding value in accomplishing a purpose to which Brinkmann wishes especially to see them dedicated, namely, "to promote . . . coöperation between national branches of research." Mr. Brinkmann's current coöperation in a series edited by Professor Merriam dealing with the promotion of patriotic concepts in different countries ought to prove highly interesting.

Through his realistic analysis, Brinkmann is led to the conclusion that "there is a common tradition for all the members of the European family of nations leading up to modern democracy." He finds two streams of political thought, 'one which shows man inseparably bound together with his kind . . . , the other which watches with jealous criticism the rights of the individual.' Having concluded that there is such a common tradition for the entire European polity, the question becomes significant "as to what parallel instruments of political and legal technique have by those . . . governments been directed to the same constitutional objectives." After examining natural rights, Brinkmann suggests that "the whole catalogue of the fundamental rights of modern constitutions, so perplexing to lawyers in its vagueness and apparent arbitrariness, becomes intelligible and consistent as soon as you review it in the light of the social and economic service" which they are capable of rendering. But Brinkmann does not wish to identify himself with socialism as a critic or successor of democracy. He is concerned with showing "that the ways of democracy itself are running in ever restless variations between the two extremes of wholesome individualism and wholesome collectivism." Brinkmann's realistic approach thus resolves itself into an "humble appreciation of the relativity of democratic government."

Considering these essays as a delicate *hors d'oeuvre*, we await with a keen appetite Mr. Brinkmann's study of American patriotism.

CARL JOACHIM FRIEDRICH.

Harvard University.

Political Science and Government. BY JAMES WILFORD GARNER. (New York: American Book Company. 1928. Pp. x, 821.)

To many political scientists this recent book from the pen of Professor Garner will appear to be a revision of an earlier work, published in 1910, under the title of *An Introduction to Political Science*. This older volume is so familiar to the readers of this *Review* that little need be said of the content of the new one. The general arrangement and method of treatment remain the same, but revisions and additions are so numerous that it should properly be regarded as a new book. Chapters on citizenship and the origins of the state are omitted entirely—the latter doubtless because it is of more direct interest to historical sociologists than to political scientists. In the chapter on the forms and types of states the author very properly warns against attempts to classify states on the basis of differences in governmental organization, but proceeds to follow the traditional method of treatment as a concession to popular usage. However, theories of state functions are transferred to the chapters on government, where they properly belong.

The purpose of the author seems primarily to have been to present an exhaustive summary of the political views of writers of all ages, together with an evaluation of their judgments. This purpose is admirably fulfilled. The contents, however, likewise reveal much of the writer's own political philosophy. It is clear, for instance, that he has not been led astray by contemporary fulminations against the doctrine of state sovereignty, although he denies it any legitimate place in the field of the state's external relations. He is a conservative defender of the older view of representation, but guild socialists and related writers of our day are treated fully and fairly. The idea of group representation is conceded to have certain value, but the author is clearly not impressed with it as a cure-all. In the discussion of the metaphysical theory of the state Rousseau is rather surprisingly omitted. Perhaps the author relates too closely the later German imperial propagandists of the nineteenth century with the earlier German idealists. He says that the English school never carried the metaphysical doctrines as far as the Germans, but admits that Bosanquet measures up to Hegel in most of the essentials.

The book is singularly free from mechanical defects; such typographical errors as appear on page 32, in the quotation from Seeley, are rare. On the whole, Professor Garner's well-known clarity of expres-

sion, remarkable scholarship, and balanced judgment combine to make this one of the most satisfactory of his many treatises.

C. O. GARDNER.

University of Cincinnati.

Parliamentary Logic. BY WILLIAM GERARD HAMILTON. (Cambridge: W. Heffer and Sons, Limited. 1927. Pp. 88.)

The Statesman: An Ironical Treatise on the Art of Succeeding. BY HENRY TAYLOR. With an Introduction by Harold J. Laski. (Cambridge: W. Heffer and Sons, Limited. 1927. Pp. 191.)

An English house has begun the publication of a Reprint Series with two volumes that should interest any student of political science and should be particularly welcome to men engaged in the making or administering of laws. William Gerard Hamilton's *Parliamentary Logic* is republished for the first time since its appearance in 1808. It consists of 553 brief paragraphs of suggestion for success in debate, apparently notes jotted down in the course of more than two score years in the House of Commons. These notes had not been elaborated into an orderly treatise, nor even classified, at the time of Hamilton's death, and when later they were printed, it was with no attempt at sequence. The result suggests the accidents of a well-shuffled pack of cards.

Of the advice itself one may fairly say that, whether in a legislative assembly, on the hustings, or at the bar, it would equally help the sincere advocate and the unscrupulous demagogue. To win, by fair means or foul, is the aim. The counselor wholly ignores such petty considerations as right or wrong, truth, and honor. Indeed, stress is laid on ways to make the worse appear the better reason.

Sir Henry Taylor seems to have meant *The Statesman* to be equally cynical, judging by the sub-title he gave to it—*An Ironical Treatise on the Art of Succeeding*. He did not live up to his adjective, for to most of his advice no one could reasonably take exception. Although written with only English conditions in mind, and almost wholly devoted to the administrative side of public service, to which few American statesmen give long attention, there is enough that bears on the workings of human nature in any and all of the relations of public office to make perusal worth while, here or anywhere else.

Each of these volumes, however interesting, raises a question as to efficacy. Whether success in debate or in statesmanship can be achieved,

or even much advanced, by studied effort in mechanics is a matter of doubt. The man who tries to learn all the rules these authors lay down should beware lest in laboring for artificial excellence he forget to be his natural self. Furthermore, maxims and dogmatic counsels may supplement, but they cannot supplant, simple decency, clear thinking, and general culture as the most effective means to such success in public life as is worth while. These inspire the confidence that awards honor.

ROBERT LUCE.

Washington, D. C.

The Inquiring Mind. BY ZECHARIAH CHAFEE, JR. (New York: Harcourt, Brace and Company. 1928. Pp. x, 276.)

Professor Chafee has here collected and republished various papers and addresses. Most of these deal with the problem of freedom of speech as reflected in contemporary and recent events—war-time trials, industrial controversies, the present state of Boston's campaign of censorship, and the like. All of these are useful case studies to give to the student of politics as well as the "average citizen." A few reviews which are included are of much less value, although that of White's life of Wilson contains much common sense. The two leading papers, "The Inquiring Mind" and "Give Your Mind Sea Room," are above the average of addresses before university audiences (for they were so used), especially in their comment on the relation of the alumnus to his alma mater. Professor Chafee writes as one who would have the powerful classes in society "fight fairly and wisely;" he has not explored the possibility that such an attitude will come only when their critics are sufficiently strongly organized and capably led to force the respect and fair treatment which he would give them as an absolute right. In most of the papers the style is adequate, although not rising to the heights of the positions argued at times. Teachers will do well to introduce their students to the volume as a stimulant.

JOHN M. GAUS.

University of Wisconsin.

BRIEFER NOTICES

AMERICAN NATIONAL GOVERNMENT AND CONSTITUTIONAL LAW

The President's Removal Power Under the Constitution, by Edward S. Corwin (The National Municipal League, pp. 70), is a reprint, with some textual changes and the addition of a valuable preface, of an able

article which Professor Corwin originally published in the *Columbia Law Review*. It is a vigorous attack upon the majority opinion of the Supreme Court in the Myers case, which held that the President's power to remove officers appointed by him with senatorial consent, being an inherent executive power, was constitutionally beyond the reach of Congressional restriction. This position is criticized as unsound, both historically and logically. Professor Corwin's principal contribution is to emphasize what the Court ignored, i.e., that the issue between this executive power of removal and any implied legislative power to restrict such removal should be resolved, not by a uniform and sweeping rule, but according to the nature of the office from which removal is sought. In other words, to assert an unlimited presidential removal power over cabinet officers or the President's other executive subordinates does not necessitate the assertion of a similar power over offices, such as the comptroller-general or the great independent commissions, whose functions are not primarily executive. The argument is convincing, and the essay is quite the most valuable and through-going analysis of the whole problem that we have. It is a satisfaction to have it available in this convenient form. R.E.C.

The Constitution of the United States in Some of Its Fundamental Aspects, by Gaspar G. Bacon (Harvard University Press, pp. 201), comprises six lectures delivered in 1927 at Boston University. The book's scope is indicated by the chapter headings: "The Constitutional Convention of 1787," "The Four Corner-stones of the Constitution," "Our Dual Form of Government," "What the Constitution Means to the Citizen," "The Balance Wheel of the Constitution" (judicial review), and "The Dangers to Representative Government." The book follows somewhat the method and style of Mr. James M. Beck's volume on the Constitution, from which the author has borrowed a good deal. It is reverential in tone, and written from a highly conservative point of view. Possibly due to its necessary brevity, it becomes increasingly dogmatic as it progresses. It is liberally interspersed with the author's opinions unsupported by evidence. The last chapter is less relevant to the main subject of the book than the others, being a vigorous attack on the initiative, referendum, recall, and direct primary and a plea for more effective and responsible party leadership. The book is written in pungent and readable style. R.E.C.

An Outline of American Federal Government, by Stuart Lewis (Prentice-Hall, pp. ix, 224), follows the order of the traditional text-book on

American national government, with chapters devoted to background, the Constitution, the Senate, the House of Representatives, joint Congressional activities, powers of Congress, the President, the departments, the independent establishments, the judiciary, relations to states and territories, citizenship, international relations, and political parties. The characteristic feature of the work is its conciseness, which is both an advantage and a limitation. The advantages are self-evident; the limitations arise from the difficulty in making a mass of detail interesting in short space. There are several unfortunate typographical errors for which perhaps the publishers rather than the author should be held responsible. The "Bibliographical Sketch" appears in the table of contents as "Biographical Sketch," and the author's own name in connection with his *Readings in Party Principles and Practical Politics* appears as "Stuart Leins" (p. 184).

The Constitutional Status and Government of Alaska, by George W. Spicer (Johns Hopkins Press, pp. ix, 121), discusses the acquisition of Alaska, its constitutional status, the civil and political rights of its inhabitants, the judicial system, and the legislative power. The author is of the opinion that the agencies for the enforcement of law now diffused among various establishments should be consolidated under the department of justice; that the economic welfare of the territory would be enhanced by the extension of a wider power to the territorial legislature, especially in regard to game and fisheries; and that it is the duty of Congress to "disentangle the departmental red tape as exhibited in the multiplicity of federal agencies, with their overlapping jurisdiction and divided responsibility," and consolidate "all federal control in Alaska, with the exception of purely national and scientific or investigative functions, in a single federal agency under the department of the interior."

Houghton Mifflin and Company has taken advantage of the presidential year and the one hundredth anniversary of Jackson's election to bring out an anniversary edition of *The Party Battles of the Jackson Period* (pp. xix, 506), by Claude G. Bowers, who was the "key note" speaker at the 1928 Democratic convention. The book, which is written in a facile style and with a scholarly understanding of the history of the period, has already established its reputation, and the publishers are to be congratulated upon making it more accessible through a new edition, which is uniform with the author's even more famous work on *Jefferson and Hamilton*. A new book on the same general period, of

interest alike to historians and students of American political theory, is *Calhoun and the South Carolina Nullification Movement*, by Frederic Bancroft (Johns Hopkins Press, pp. vi, 199).

Thomas H. Sherman, private secretary to James G. Blaine, has written his reminiscences in a volume entitled *Twenty Years with James G. Blaine* (Grafton Press, pp. v, 194). While there is little that is new in the book, the material has a certain directness and freshness because of the close connection between the author and his subject. There is an introduction by Nicholas Murray Butler.

STATE AND LOCAL GOVERNMENT

Two reports dealing with public administration in New York are Volume V of the Regional Survey of New York and its Environs on *Public Recreation* (pp. 256), and *The Finances and Financial Administration of New York City* (Columbia University Press, pp. xxii, 361), edited by Lindsay Rogers. While describing the recreational facilities of Greater New York, the first-named volume contains many ideas and principles which have application to recreation situations throughout the country, and should therefore be of general interest to students of municipal administration. The second-named volume is an exhaustive study containing the recommendations and report of the sub-committee on budget, finance, and review of the City Committee on Plan and Survey. The bulk of the volume is made up of reports on the fiscal structure of New York City, the planning of New York City's expenditures, expenditures for salaries, purchasing agencies and methods, the revenues of New York City, the assessment of property for taxation and special assessments, New York City's debt policies and subway finance, each of which has been written by a well known authority such as Joseph McGoldrick, Luther Gulick, A. E. Buck, Russell Forbes, Paul Studensky, and John Dickinson. There are numerous tables, digests of laws, and ordinances and appendices. No similar study of New York's finances has been attempted before, and it is very clear that such an excellent piece of work could not have been accomplished in a year and a half without the coöperation of a number of experts and the able direction of Dr. Rogers.

The Classified Property Tax in the United States (Houghton Mifflin Co., pp. xiv, 492), by Simeon E. Leland, is the most recent of the Hart, Schaffner and Marx Prize Essays in Economics. The book deals with the background and history of the movement for classification, the

theoretical justification for the tax, the arguments for and against it, actual experiments with the classified property tax in such states as Pennsylvania, Connecticut, Maryland, Rhode Island, and Iowa, and the results. The author's conclusions are, first, "that if legal classification is not adopted, illegal or extra-legal classification will be found as long as property is taxed by a uniform rule. . . . In the second place, the right to adopt classification is essential in any program of state tax reform. . . . In the third place, the results in every state indicate that classification must be accompanied by adequate and efficient administration. . . . Finally, the greatest gain from classification has been the added justice which it has accorded those classes of tax-payers whose property has been unduly taxed by the high general property tax rates."

Teachers of state and local government interested in the subject of the administration of justice in cities will find John MacArthur Maguire's *The Lance of Justice* (Harvard University Press, pp. xi, 305) a most valuable source of both information and inspiration. The book, which is written in a style more readable and attractive than the average, gives a comprehensive history of the organization and development of the Legal Aid Society of the city of New York during the last half-century. The author illustrates his points and enriches his material by narrating a large number of actual cases with which the Society has dealt. After reading the book, one must agree with Mr. William D. Guthrie, who writes in the foreword: "Legal aid has been the greatest movement of all English and American legal history for bringing justice to the poor, . . . and there can be no doubt that it has furnished . . . the greatest object lesson in modern judicial administration of both civil and criminal justice." Closely related to the same subject is *Piedpoudre Courts: a Study of the Small Claim Litigant in the Pittsburgh District* (Legal Aid Society of Pittsburgh, pp. 219), by Professor Gustav L. Schramm, of the University of Pittsburgh. Mr. Schramm's study is based upon an examination of over 18,000 cases of petty legislation. *Progress in the Law*, which is No. 225 of Volume CXXXVI of the *Annals of the American Academy of Political and Social Science* (March, 1928, pp. 187), also treats of the same topic in its articles on conciliation and legal aid, legal aid organization as lobbyists for the poor, and the public defender in police courts. Other articles of special interest to students of government are: "The Changing Attitude of the People Toward the Law," by Dean Roscoe Pound; "Uniform Laws"; "The

Rule-Making Power of the Courts"; "Administering Justice in Cities," by Herbert Harley; "Executive Clemency;" and "Legislative Reference Work."

Carter Henry Harrison I, by Claudius O. Johnson (University of Chicago Press, pp. xiii, 306), in the words of Professor Charles E. Merriam, at whose suggestion the study was undertaken, "is a significant attempt to study the social situation under which an urban leader has developed, to examine as carefully as possible his most striking traits, to analyze his special skills and the techniques he employed in particular situations, and to draw this material together into as close-knit a texture as might be." The author has accomplished the purpose expressed by Professor Merriam and has given the student of politics and of municipal government a readable and keen analysis of a great mayor of Chicago who was at the same time an honest man, a clever politician, and a good administrator. Part I is devoted to Harrison's ancestry, education at Yale, early life, and general social, economic, and political background. Part II deals with personal traits; while Part III discusses Harrison's political technique, with special reference to his methods of securing nominations and elections; "how he won and held his following; how he acquired and used his enemies; his leadership . . . and . . . his tactics in dealing with his council."

Supervision of the Conduct of Elections and Returns, with Special Reference to Pennsylvania (privately printed, pp. v, 156), by Edward Bates Logan, was written as a doctoral thesis at the University of Pennsylvania under the direction of Professor Clyde L. King. The author concludes that bipartisanship is not a real safeguard and that the election system in Pennsylvania is decentralized to an extreme degree. "Non-partisan boards of election, appointed by the governor, such boards to have the power of appointment and supervision of precinct election officers, promise better results." The Department of Efficiency in Government of the National League of Women Voters has issued two very useful pamphlets: *A Brief Digest of the Laws Relating to Absentee Voting and Registration* (pp. 98), and *A Supplement* (pp. 20) to the 1927 edition of *Nominating Methods*, noting recent changes in primary laws. Both booklets were prepared by Miss Helen M. Rocca.

Teachers of state government have long felt the need of careful studies of recent constitutional conventions, and Dr. Ralph C. McDanel has filled the need, so far as one important state is concerned,

by his work on *The Virginia Constitutional Convention of 1901-1902* (Johns Hopkins University Studies in Historical and Political Science, series XLVI, no. 3, pp. xii, 166). He reaches the conclusion that while the chief weakness of the convention was its lack of effective leadership, "the convention did the state a great service when it removed the negro from politics and thus rendered the purification of the electorate possible," and that "the corporation article was a real piece of constructive statesmanship" which "has been worth to the state many times the cost of the convention in money, not to mention its service in removing the political departments of the government from the suspicion of corporate control."

The Fiscal Problem in New York State (pp. 275) is the latest of the studies in taxation and public finance published by the National Industrial Conference Board. Gross expenditures of state and local governments have grown from 468 million dollars in 1917 to 1,108 millions in 1925, an increase of 136.5 per cent. Allowing for the general increase of prices, there has been an increase of 80 per cent in expenditures. Per capita expenditures in "1917" dollars have increased 62.2 per cent. The expenditures of New York City and the villages have increased less than the general average; while counties, towns, and school districts have increased their expenditures more rapidly than the average. The existing tax system is examined in detail, and some proposed sources of additional revenue are discussed. An increase of state aid to local governments is anticipated, and central control of local finance is considered desirable.

FOREIGN AND COMPARATIVE GOVERNMENT

Modern Japan and its Problems, by G. D. Allen (Dutton, pp. 226), contains an interesting chapter on the political system. In the opinion of the author, "the Japanese system of government resolves itself into an adjustment, varying from period to period, between the claims of rival groups. The militarists and the bureaucrats, whose power is based on the Sat-Cho combination, and who express their policy through the Genro and the privy council, are still the most powerful influence in the government. But their policies have been modified in accordance with the demands of the various industrial groups, who are fighting for the control of the government, both by alliance with the parties in the legislature and by more direct pressure exercised from outside. The former method of attack has increased the power of the

lower house; but although it is becoming more and more difficult for a government to exist without the support of political parties, the latter are very far from possessing the initiative in policy. A further check on the power of the bureaucrats lies in the growing strength of labor; and, finally, though the people as a whole take little interest in political technique, there is the power of public opinion against which no government can or will act." The author concludes by stating that it "seems probable that some form of compromise between a parliamentary system of the English type and government by functional bodies and groups will ultimately emerge."

A Political Handbook of the World (pp. 192), edited by Malcolm W. Davis and Walter H. Mallory, and published for the Council on Foreign Relations jointly by the Harvard University Press and the Yale University Press, fills a long felt need. It gives in compact and easily accessible form the essential information on (1) the composition of the governments of the world, including the name of the chief executive and his party if any, the premier and his party, the party representation in the legislative bodies, and the officers of these bodies; (2) the character and aims of the various political parties in sixty countries; and (3) the party affiliations and tendencies of the leading newspapers in each country. With this information available, the American reader should be in a better position than formerly to follow intelligently the current newspaper and magazine articles on foreign politics and to interpret quotations from the foreign press.

Two pamphlets presenting *Proposals for Reform in Local Government* (pp. 57 and 39) have recently been issued by the Ministry of Health for England and Wales and the Scottish Office. These are based on proposed changes in the system of local finance, involving a reduction of local rates on productive property and an increase of parliamentary grants. The changes in local government proposed are the abolition of special local authorities for poor relief, highways, and (in Scotland) education, and the addition of these functions to the work of the county boroughs and county councils.

Two current books on Russia and its recent leaders are *Lenin*, by Valeriu Marcu (Macmillan, pp. 411), and *The Real Situation in Russia*, by Leon Trotsky (Harcourt, Brace and Company, pp. xxv, 364). The former is a well written but laudatory biography of the chief figure of the Russian revolution, who is regarded by the author as the outstand-

ing man of this generation and stronger than any figure of the French revolution. It is clearly the best biography of Lenin in English. Trotsky's book, which is translated by Max Eastman, is largely a defense of his policies and actions and an attack on Stalin. The work is illustrated and documented with official papers, correspondence, and public speeches.

Danzig, Polen, und der Völkerbund, by Hans Adolf Harder (George Stilke, pp. 134), is a study of the relations between the free city and its neighboring states, with particular reference to the petty disputes with Poland. The author is of the opinion that, in general, the League of Nations has fulfilled its task as protector of the city and its constitution.

The relations between the various members of the British Empire are discussed in Dr. Giambattista Mazzoleni's study of *L'Odierno Impero Britannico sua configurazione costituzionale ed internazionale* (Ufficio presso la R. Università di Pavia, pp. 148). The author, in general, keeps to statements of fact and leaves theories and prophecies aside. The result is a clear, orderly presentation of a complicated and elusive subject.

Teachers of English government looking for interesting biographies to assign students should not overlook *Disraeli: a Picture of the Victorian Age*, by André Maurois (D. Appleton and Company, pp. xiii, 378). Without distorting essential facts, the author has woven the life of England's great prime minister into a charming novel which makes the remarkable figure live again in the minds of the reader.

INTERNATIONAL LAW AND RELATIONS

The second volume of *Survey of International Affairs, 1925* (pp. x. 486), by C. A. Macartney and others, has been published by the Oxford University Press (American Branch) under the auspices of the Royal Institute of International Affairs. The first volume was noted in the *Review* for May, 1928 (p. 489). The present volume deals, first, with world affairs in general, under the headings of security, disarmament, economic and social coöperation, with special reference to the lapse of the Geneva protocol, the Locarno conference and resulting treaties, the arbitration treaties concluded in 1925, the work of the International Labor Office, intellectual coöperation, codification of international law, traffic in opium, and the health organization of the League of Nations. Then follow other parts devoted to important foreign relations in

Europe, the Far East, and the American continent. Practically all of the section on the Far East is devoted to Chinese affairs. Appendices contain the text of the Locarno pact and Article 27 of the Mexican constitution of 1917. The *Supplement* (pp. 235) to the *Survey*, compiled by V. M. Boulter, contains a detailed chronology of events and treaties from January 1, 1920, to the close of 1925. Students of international law and those interested in foreign affairs in general cannot afford to overlook this valuable mine of accurate and intelligent information. The Oxford University Press has also published a small volume on *Learning and Leadership* (pp. 111), by Alfred Zimmern, which is best described by its sub-title as a "study of the needs and possibilities of international intellectual coöperation." In the first chapter the author discusses the political, economic, and social interdependence of the world, and the problems involved in the exercise of intelligent popular control over a complicated environment. Next follows a summary of the various stages of public education from the pre-school period to the university, with emphasis on the part played by each in the advancement of international intellectual coöperation. The last two sections deal with the importance of knowledge in public affairs, the value of organized coöperation in advancing knowledge, and the dangers of over-specialization in education.

Some fourteen addresses and articles by Professor A. Pearce Higgins, of Trinity College, Cambridge, who lectured in the United States during 1927, have been published by the Cambridge University Press under the title *Studies in International Law and Relations* (pp. viii, 314). The first four studies deal with the interdependence of international relations and international law, the others with such subjects as the papacy and international law, the Locarno treaties, the law of nations and the war of 1914, retaliation in naval warfare, and the position of defensively armed merchant ships. Although regretting "the necessity that states should be compelled to have recourse to this expedient," Professor Higgins concludes that "from the standpoint of international law the legality of defensively arming merchant ships as aids to their legitimate resistance to capture appears established." Some other recent books dealing with international law and diplomacy are *The Recognition Policy of the United States Since 1911*, by Taylor Cole (Louisiana State University, pp. xi, 104); *Problems in International Understanding* (University of Washington Book Store, pp. iv, 199), including lectures delivered at the University of Washington by Gra-

ham H. Stuart, Harley F. MacNair, and others, and edited by Charles E. Martin and Edith Dobie; *The War Debts; An American View* (Macmillan, pp. vii, 173), by Philip Dexter and John H. Sedgwick; and *The Interpretation of Treaties* (Columbia University Press, pp. 288), by Tsune-Chi Yü. The latter is a painstaking study, based upon an analysis of about 300 cases, of the standards of interpretation, the sources of evidence, and the rules of construction, including the principles of high purpose, morality, fairness, protection against fraud, liberality, international law, and the doctrine of *uberrima fides*.

The Division of International Law of the Carnegie Endowment for International Peace has recently brought out as one of its Classics of International Law, edited by James Brown Scott, Samuel von Pufendorf's *De Officio Hominis et Civis Juxta Legem Naturalem Libri Duo* (Oxford University Press, American Branch, pp. 30, xxii, 167; 30, xii, 147). This edition is published in two volumes, the first being a photographic reproduction of the 1682 edition, together with Walther Schücking's introduction (in the original German), while the second contains a translation of the 1682 edition by Frank Gardner Moore, and a translation of Schücking's introduction by Herbert F. Wright. There is also an index prepared by Professor Wright.

POLITICAL THEORY AND MISCELLANEOUS

Max Farrand's translation of Georg Jellinek's treatise about the declaration of the rights of man has led to such general acceptance of the views expressed therein that this new edition, published by Walter Jellinek after the death of his father, ought to be noted with interest by students of American political thought and constitutional history. The original study of Jellinek has been the center of much discussion. The new edition of *Die Erkläerung der Menschen und Buergerrechte* (Duncker und Humblot, pp. xx, 85) is based upon marginal notes and other additions which Jellinek prepared. The larger additions concern the idea of a declaration of duties alongside with the one of rights (p. 14), the recognition of a right to work as an inalienable right in France (p. 15), the struggle over religious liberty in the French National Convention (p. 30), the transformation of rights of citizens into rights of man (p. 42), the historical position of Roger Williams (p. 47), the development of the idea of religious toleration in Maryland (p. 51), toleration and intolerance in America (p. 54), the history of natural law (p. 57ff), and, finally, the connection between religious

liberty and the freedom of the press and the right of the people peaceably to assemble (p. 61). A good deal of the more recent literature has been taken into consideration, but neither Charles H. McIlwain's *American Revolution* nor Bernard Fay's *L'esprit révolutionnaire en France et aux États-Unis à la fin du XVIII^e siècle* is among them. The conclusions of both these works must be of great importance to anyone interested in the migration of legal ideas and political institutions, even though he hold with Jellinek that "Die Litteratur für sich ist niemals produktiv, wenn sie nicht in den historischen und sozialen Verhältnissen einen für ihre Wirkungen vorbereiteten Boden findet." Jellinek also does not seem to appreciate the considerable influence which the Rev. John Wise exerted in solidifying that insistence upon a clear-cut separation of church and state and the freedom of conscience which Jellinek himself properly considered the first practical step toward developing the concept of natural rights of man. C. J. F.

Les Editions Rieder (Paris) have published a new volume of their *Les Textes du Christianisme* entitled *Les Documents Pontificaux sur la Démocratie et le Société Moderne* (pp. 282), which contains the important papal briefs, apostolic letters, and encyclicals since 1775, edited with a brief historical introduction (pp. 28) and notes by Georges Michon. The introduction concludes with the broad accusation: "à la vérité, l'Eglise n'a jamais su se dégager de la cause des puissants et des riches." The little volume ought to prove useful in connection with publications dealing with the relation of the Catholic Church to the state, especially in the United States, where the candidacy of Governor Smith for the presidency has brought the problem into the limelight. The conclusion seems to spring from these pages that the papacy and democracy are engaged in a mortal battle, but it may be doubted whether such a simple statement tells the whole story. A thesis published some time ago by Edward F. Murphy, entitled *St. Thomas' Political Doctrine and Democracy*, came to exactly the opposite conclusion. C. J. F.

The Stammering Century, by Gilbert Seldes (John Day, pp. xviii, 414), is a clever and readable narrative concerning the various fads, manias, extravagances, social Utopian theories, and religious fanaticisms which prevailed during the nineteenth century and the part which they played in American life. Among other figures and movements, the author includes the communities established by Rapp, Owen, and Noyes, the activities of the evangelists Moody and Sankey, Frances

Willard, Carrie Nation, Alexander Dowie, and a host of others who are less familiar. It is the author's observation that "in nearly every . . . case, the more gifted, the more intelligent, the more experienced classes were the first to accept an absurdity and the last to give it up.

. . . The fact remains that one cannot distinguish the herd-majority from the civilized minority by ascribing to the former any special tendency to be taken in by charlatans. The minority is as susceptible to mass-suggestion as the majority."

A fascinating book is *Die Staatsidee Alexander Hamiltons in ihrer Entstehung und Entwicklung*, by Alex Bein (Berlin, Oldenbourg, pp. 186). Not only are Hamilton's well-known theories, as presented in *The Federalist* and in the Constitution itself, given a thorough discussion, but his lesser writings, such as the *Continentalist*, letters, and so on have been made to contribute to the subject. Above all else, the book shows Hamilton's ideas as the outgrowth of the times and conditions under which he lived. As a German critic has expressed it, "this work gives . . . the biography of an idea."

Politik (Quelle und Neuer, Leipzig, pp. 182), by Fritz Stier-Somlo is the sixth edition of a concise little handbook dealing with the theoretical and juristic aspects of the modern state as they are traditionally dealt with in German universities.

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AMERICAN GOVERNMENT AND PUBLIC LAW

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